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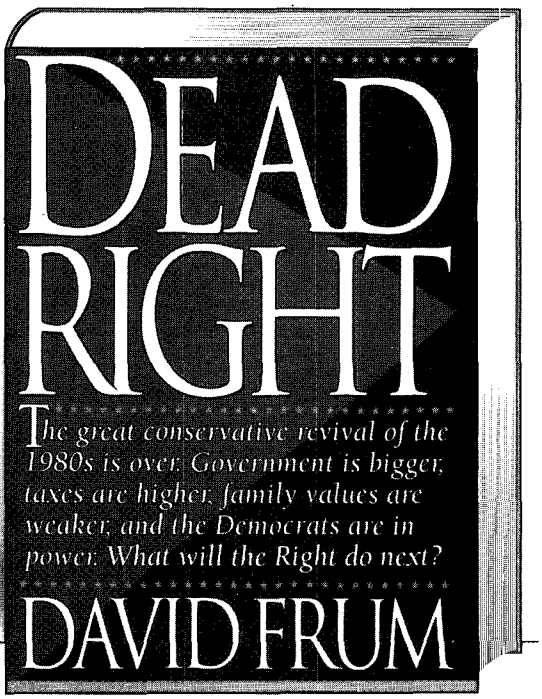
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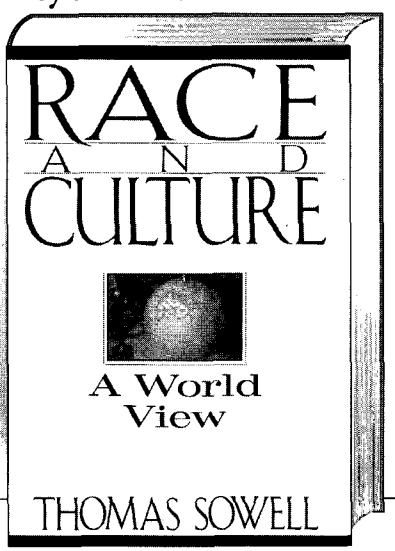

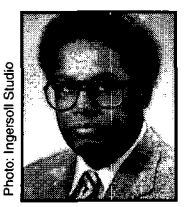

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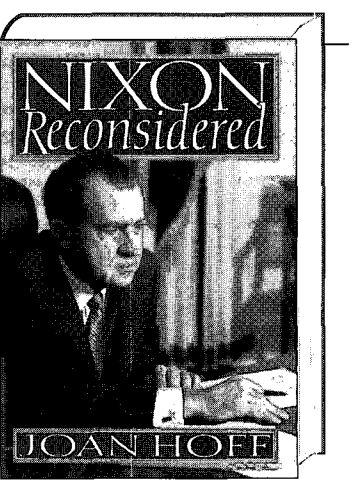

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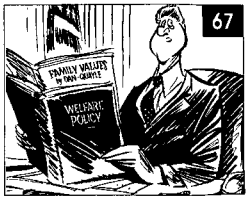

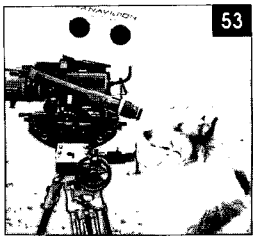

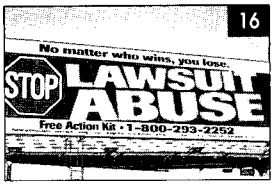

FEATURES

20 ■ The Great Tax Revolt of 1994
Stephen Moore and Dean Stansel
The grass roots of the new state anti-tax initiatives.

26 ■ Voodoo Social Policy
Jacob Sullum
Demonizing guns and drugs is political black magic.

32 ■ Life, Liberty, & the ACLU: An Interview with Nadine Strossen
Cathy Young
Discussing rights in the age of P.C.

38 ■ The New Anti-Welfare States
John Hood
How states are working to get rid of the dole-drums.

EDITORIALS

4 ■ New Alliance Parties
Virginia I. Postrel
Former political enemies are finding common ground in a radically ideological age.

6 ■ Affirmative Reaction
Brian Doherty
Ethnic turf wars at the U.S. Postal Service reveal the fundamental flaws of race-based civil rights laws.

COLUMNS

46 ■ Environment: Preservation Acts
Rick Henderson
The property-rights movement stakes out its territory.

49 ■ Enterprise: Desert Boom
Robert Pollock
Israel creates a capitalist oasis in the desert.

51 ■ Magazines: Crime Time
Martin Morse Wooster
Politicians try to make crime pay off at the ballot box.

53 ■ Movies: Reclaiming the Vast Wasteland
Nick Gillespie
Movies recycled from old TV shows aren't necessarily trash.

74 ■ Selected Skirmishes: Boob-Tube Babble-On
Thomas W. Hazlett
There's nothing wrong with too much television.

BOOKS

58 ■ Right Cross
Rick Henderson
***Dead Right**, by David Frum*

62 ■ Reactionary Feminism
Tama Starr
***Who Stole Feminism: How Women Have Betrayed Women**, by Christina Hoff Sommers*

67 ■ A Right to Welfare?
William H. Mellor III
***Between the Lines: Interpreting Welfare Rights**, by R. Shep Melnick*

70 ■ An FDA Fable
Robert Higgs
***The FDA Follies**, by Herbert Burkholz*

DEPARTMENTS

8 ■ Letters
Chemical controversy, the perils of protectionism...

14 ■ Brickbats
The war of dogs, East-bloc erotica...

16 ■ Trends
Lawsuit abuse, backyard wetlands...

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New Alliance Parties

By Virginia I. Postrel

Strange bedfellows in a "post-ideological" age?

THE REPORTERS AND THE WHITE House were shocked. On a seemingly routine procedural vote, the Clinton crime bill had gone down to defeat in the House. The vote, news stories and pundits agreed, was "stunning," "devastating," "somewhere between crushing and catastrophic," "a startling defeat." It was, said David Brinkley, "a bad week for Clinton, very bad."

And so it was. But the crime bill vote was not primarily a referendum on the president. It was a referendum on government power. And for one rare moment in a city obsessed with the extension and manipulation of that power, the skeptics won.

They were, said all reports, an unusual coalition: liberal black Democrats opposed to the death penalty, conservative Republicans opposed to lavish social spending, and moderate-to-conservative members of both parties opposed to gun control. They had in common one conviction—that increasing the power and scope of the federal government would not make life better for their constituents. For this moment at least, they were skeptics, questioners of conventional solutions.

So the crime bill vote was not just a defeat for Clinton. It was an in-your-face declaration that the tyranny of the power-worshiping center is not inevitable. And it was a suggestion of alliances to come.

In the last several years, it has become a cliché among political analysts that the old ideological categories don't mean much in the post–Cold War world. With right and left in disarray, we have supposedly entered a "post-ideological age" in which "pragmatism" will dominate, giving us rule by a "vital center" with no guiding principles. That way lies the cynical campaigning of the California governor's race, in which Pete Wilson and Kathleen Brown sling insults at one another in a desperate attempt to disguise the fact that they differ hardly at all.

The post-ideological age is a myth, however. The current period of ideological flux has in fact exposed *deeper* divisions than the ones to which we have long been accustomed. Rather than a post-ideological age, we are now in a radically ideological age, in which ideas are taken to their roots, to their fundamentals, in which the categories are broader and deeper, and the divisions more sharply defined, than the old left and right.

WE SAW ONE SUCH DIVISION—A STARK, old-fashioned one—in the crime bill debate. Over the past several months, others have cropped up, creating "odd alliances": a coalition of anti-growth liberals and blood-and-soil conservatives to stop Disney from building an American history theme park in Northern Virginia (the free-market objection that the park is getting state subsidies isn't part of the main debate); an alliance of environmentalists and farmers to block development by using water policy to favor the status quo in California; and, most important, a coalition of environmentalists, left-wing activists, and conservative nationalists, to defeat the new world trade treaty.

Those examples capture an increasingly common pattern. On issue after issue, partisans of stasis are appealing to state power to block the dynamic processes of markets and individual choice. And, in more and more instances, they are allied across traditional ideological categories. To credit them with spanning a broad spectrum of opinion—with representing some sort of consensus—is to fall into a trap. In a radically ideological age, they are the friendliest of fellow travelers.

A few days before the crime bill vote, Ralph Nader issued a press release titled, "Broadest Range of American Political Spectrum Ever to Jointly Petition a President Call for GATT Vote Postponement." The title is not merely ungrammatical. It is a lie.

It disregards the profound agreement among "Jerry Brown and Pat Buchanan; Tom Hayden and Lyn Nofzinger; Richard Viguerie and Kurt Vonnegut; Ralph Nader and Paul Weyrich; the editor of the right-wing American Spectator and the editor and publisher of the Progressive." They use different words—*democracy* on the left, *sovereignty* on the right—but the signatories have the same concerns and the same agenda. They are afraid that the new trade treaty will weaken the U.S. government's ability to control the economic choices of its citizens.

Sir James Goldsmith, not an American and therefore not on Nader's list, warns that free trade "threatens to shatter the social consensus in the West on how to divide wealth between capital and labor." In other words, it threatens the welfare state.

And the regulatory state. As Nader writes, GATT "subordinates other societal values to trade dictates, [which] has upset many labor, environmental, consumer and subnational (state and local) officials." Translation: It inhibits regulations that keep individuals from buying and selling as they choose.

Similarly, *The American Spectator*'s R. Emmett Tyrrell Jr. worries that the new treaty will keep the United States from "answering to its citizens or to its own peculiar foreign policy needs" by raising trade barriers. (Actually, the treaty does not force the U.S. government to do or not do anything—neither GATT nor its proposed World Trade Organization has an army. It simply lets an exporting country

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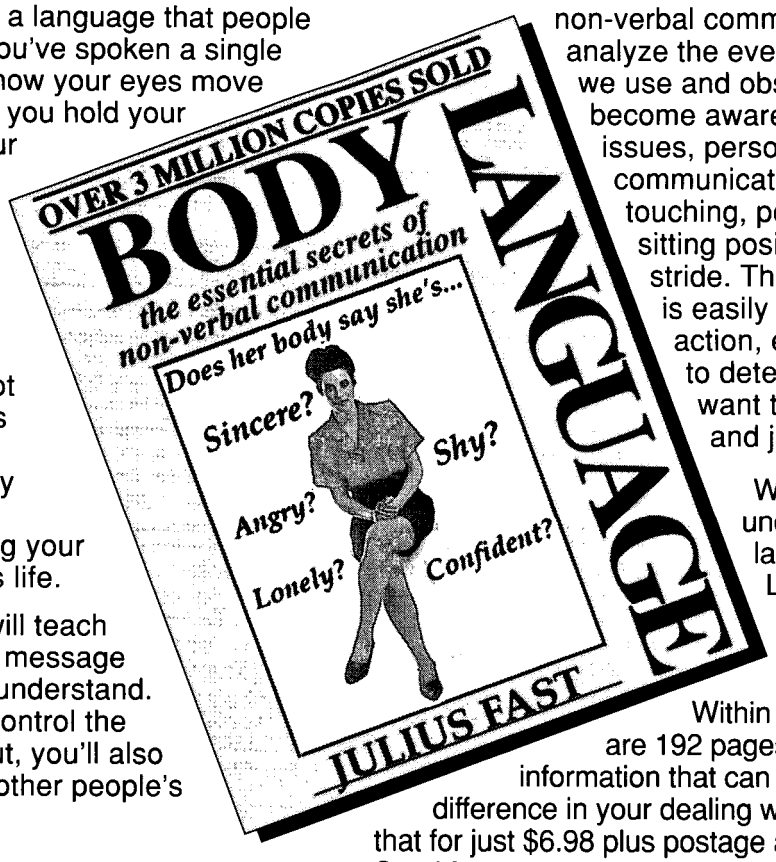

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impose retaliatory sanctions, thereby increasing the political cost of raising trade barriers.)

Writing in *The Nation*, historian Jeremy Brecher puts the issue this way: The danger is "*Loss of democratic control.* National governments have lost much of their power to direct their own economies. The ability of countries to apply socialist or even Keynesian techniques in pursuit of development, full employment or other national economic goals has been undermined by the power of capital to pick up and leave."

What is at stake is indeed "sovereignty"—the power of absolute monarchs—and "democracy"—the power of unbridled majorities. With the new treaty, and its predecessor, national governments bind themselves to respect the right of their citizens to trade. And trade itself undermines state power. That scares people whose politics is based on preserving that power—and their fear is enough to create new, apparently strange coalitions. But, as an angry President Clinton can testify, so too is skepticism about government power. In our not-at-all-post-ideological age, not all the odd alliances will be on the side of the state.

Affirmative Reaction

By Brian Doherty

Interethnic turf wars and the absurdity of racial classification

RECENT COMMENTS BY TIRSO DEL Junco, vice chairman of the Postal Service Board of Governors, illuminate a looming new battle over the benefits of affirmative action. Civil rights devotees may lament this turn, yet it is an almost inevitable result of trumping individual merit with group rights.

Del Junco slashed at already fraying ties among the civil rights community by announcing there are *too many* African Americans working for the post office in certain cities—at the expense of Latinos. By the logic of the anti-discrimination maven, he is right. Blacks are highly overrepresented among postal workers in Los Angeles compared to their share of the population. While they are only 9.6 percent of the labor force, they make up 63 percent of postal workers. A General Accounting Office survey showed a similar situation in Chicago: Blacks, while only 18.2 percent of the available labor pool, make up 79.7 percent of postal workers. In Los Angeles, a Latino labor market presence of 34 percent translates into only 15 percent of post office jobs.

Under civil rights law, this is a prima facie case of discrimination. The 1991 Civil Rights Act cemented into law the principle, already used in practice by the Equal Employment Opportunity Commission, that if your employee pool has a different proportion of races and ethnicities than the available labor pool, you can be liable for a discrimination suit.

Opponents of affirmative action argue that there are many reasons besides blatant discrimination to explain disproportionate ethnic or racial representation in the workplace. Affirmative action advocates tended to scoff. Now, in the face of Del Junco's fulminations, they are tendering defenses that—while valid—they have dismissed in other circumstances.

Charly Amos, the Postal Service's manager of affirmative action, points out that applicants for postal jobs go through objective written examinations. Except for military veterans, who get a slight boost, all comers are treated equally in the test grading. Amos thinks the preponderance of black postal workers in certain cities can be explained by networks of friends and community leaders who keep them informed about tests and hiring.

The actual hiring process, Amos says, leaves no play for personal bias. If postal hiring is done strictly by testable merit—

and Del Junco presented no contrary evidence—then Amos's position as affirmative action manager is unnecessary. And Del Junco's plaint seems to offer no hope of resolution short of wholesale firings of blacks and replacement by Latinos.

More of this kind of intramural turf warfare is undoubtedly ahead. The logic of legal distinctions made on race demands it. Such distinctions create a zero-sum game in which different ill-defined groups fight over a finite pile of government benefits and considerations.

Those distinctions also fly in the face of individual rights and merits and equality under the law, and are particularly absurd in America. Our history of racial mixing is continuing—and accelerating. As of 1970, there were 310,000 interracial couples in the United States; in 1992, there were 1.16 million. That makes attempts to divide government spoils through racial categories essentially meaningless—and troubling.

We have not yet heard calls for an American equivalent to South Africa's Population Registration Act of 1950, the cornerstone of its hated apartheid system, which gave everyone an official racial classification at birth. But we do have the Office of Management and Budget's "Statistical Directive 15" governing the federal government's data about citizens' race and ethnicity.

Making racial judgments "official" only stands to reason; controversies have already arisen about "phony" racial classification, the most famous being the 1988 case of the Malone twins, firefighters of Irish descent who were fired after it was discovered they had passed an entrance exam only under the laxer requirements for blacks. (They claimed an old sepia-toned photograph of their great-grandmother made her look black to them.)

Though the Malones lost, their logic was impeccable according to the traditional American definition of blackness. The "one drop of black blood" tradition—a leftover from Jim Crow—is still alive today, both in society and government. As Yehudi Webster, a sociologist quoted in a recent *New Yorker* article on race, put it: "It is not 'race' but a practice of racial classification that bedevils the society."

The divisive practice of thinking of individuals as representatives of "races" won't disappear, even after generations of intermarriage and assimilation, so long as government policies distribute benefits based on self-definition as an aggrieved minority. Race in America is largely a contentless phantasm, based on regressive attitudes both old (the "one drop" rule) and new (the concept of the unified Hispanic ethnicity). But that phantasm, and the resentments and turf wars it creates, will continue to haunt us at least as long as government civil rights policy continues to treat it as significant and real. ®

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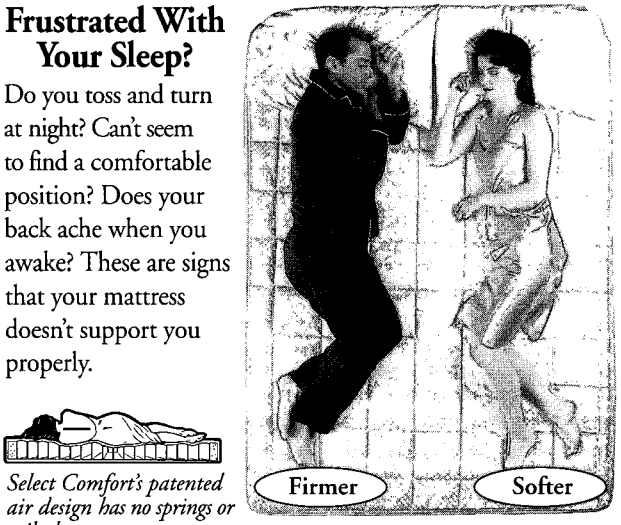

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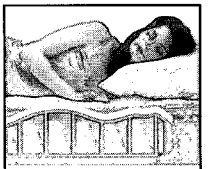

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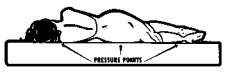

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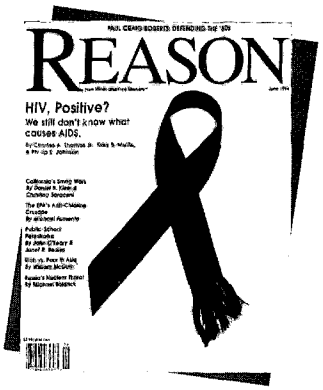

Migrant Labors

Nick Gillespie's article ("Beyond the Family Way," June), suggested a change in immigration preferences from family members of current residents to foreigners with money, skills, or both. The key point he missed, however, is that the "immigration problem" is only a problem in a welfare state.

As demand for welfare benefits increases, the state's costs soar. Most taxpayers view immigrants as net tax consumers, and thus want to keep them out. Mr. Gillespie's visa auction plan seeks only to improve the chances that legal immigrants will pay more than they receive from the welfare state. Regrettably, his plan implicitly accepts the faulty premise that individual immigrants cause the high cost of the welfare state.

Richard W. Stevens
Lorton, VA

Mr. Gillespie suggests immigration policies that may be considered improvements over our present ones. However, it is my understanding that for a small sum, it is possible for anyone knowing the right people to obtain a Social Security card. For a larger sum, it is possible to obtain a valid birth certificate that may then be used to obtain a passport which can be sent anywhere in the world, allowing the recipient to enter this country "legally."

It is worth noting as well that children born of illegal immigrants in the United States automatically become U.S. citizens. And, regarding the U.S.-Mexican border, even if a wall were built, anyone could simply come by boat and land almost anywhere on the coast. Doesn't all this make any immigration policy a farce?

Mary R. Hoover
Houston, TX

The hands of government and lobbyist were clearly visible to me in 1978 when I made it through the Immigration and Naturalization Service maze and emigrated from the United Kingdom—even before discovering REASON. INS publications made it plain that the U.S. government permitted some to enter, but not others: Specifically, "it has been determined that there is no need" for people with skills on a long list of menial jobs (presumably, ones not well-unionized).

The huge flow of immigrants in the 19th century, which generated almost all U.S. prosperity, came not so much because of a favorable immigration policy, but because of the *absence* of an immigration policy. It was just taken for granted that if people wanted to come to America, it was no business of the feds to stop them. Now, by proposing a reform of the maze, Gillespie is still granting government the one thing it loves to retain: the power to dispose of peoples' lives, in one way if not in another.

His preferred reform is to charge immigrants an entrance fee, which he supports by pointing to the huge costs borne by 19th-century immigrants when crossing the Atlantic. But the similarity is superficial. That high cost of passage was paid to people—shippers—who provided a useful service. The proposed "entrance fee" would be paid to parasites who provide no service, but merely stand at the toll gate and collect tributes. I can think of little less comparable to a free international market in labor.

REASON, surely, should not bow to considerations of what may be politically feasible in the short term. Of course, cancelling all restrictions on immigration would encounter vast political opposition. And of course, it's utterly incompatible with the welfare state. Of course, all the government's petty rules on who can hire whom, and what they can be paid, would also have to go overboard. And of course, American labor would have to compete on a level playing field again.

A principled stand on unrestricted immigration would not only conform properly with Emma Lazarus's invitation to the "wretched refuse" of foreign shores, it would sharply remind domestic opinion that America has become something that was never intended—and so hasten the end of the welfare-warfare state.

A. J. Davies
New London, NH

As a lawyer who has practiced in the area of immigration and visa law for many years, I, too, believe that family immigration amounts to nepotism and that we should seek immigrants with skills that will aid the American economy. But there are realities that need to be faced.

No American government should have the power to say that an American citizen could not bring into this country a spouse, child, or parent. If an American serviceman stationed overseas marries, almost everyone would agree that he is entitled to bring his spouse. The vast majority of family-sponsored immigration is of this type.

There are about 65,000 immigrant visas issued each year to brothers and sisters (and their immediate families). Although this seems a lot, it is only about 7 percent of all immigration each year. I am telling my new client applicants in this category that I expect a wait of between 15 and 20 years.

Other classes of relatives include spouses and children of legal permanent

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> *As this century progresses, it becomes clearer that in order to satisfy the demands of some individuals and groups for the output of others, man, through the agency of the State, has begun to leech off that which he has created. He has not only mortgaged his present output, but he has mortgaged the output of future generations by consuming the capital that took generations to accumulate. Minimum wages that deny employment to the unskilled, socialization of schools which smothers diversity and discourages innovation, rent control that consumes housing, extortion through transfer payments and stifling regulation of markets are all man's political attempts to repeal the natural laws of economics and sociology, and thus of nature. The familiar results are crumbling buildings and rotting railroads, bored and uneducated students, reduced capital investment, reduced production, inflation, stagnation, unemployment and ultimately widespread resentment and unrest. Institutionalized policies such as these create increasing instability and have the power to turn a nation of conscientious producers into a private sector of impatient gamblers and a public sector of unprincipled plunderers. When the fifth wave of the fifth wave tops out, we need not ask why it has done so. Reality, again, will be forced upon us. When the producers who are leeched upon disappear or are consumed, the leeches who remain will have lost their life support system, and the laws of nature will have to be patiently re-learned.*

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residents. Because these immigrants come under a quota list, they have to wait from three to five (and, for nationals of some countries, many more) years to obtain their immigrant visas.

Family applications are hardly the way potential immigrants wish to come into the United States in the 1990s. Our government made a big mistake during the 1980s by granting amnesty to undocumented aliens and agricultural workers. This created a massive incentive to fraud and to enter illegally while awaiting the "next amnesty." There is a better way.

Immigrants should be allowed to enter the United States to work in certain occupations that are experiencing shortages, as determined by measuring unemployment claims. If those claims amount to 2 percent or less of the estimated workers in a category, aliens who can prove at least two years experience or training in that skill should be given work visas. Those visas should be renewable every two years only upon the alien proving he or she is paying taxes and continues to work in the occupation. After six years that alien would be entitled to legal permanent residence. Harsh penalties would have to be imposed for persons who provide fraudulent documentation.

A system such as this would be easy to administer and would allow persons to come into the United States who would benefit our country and who would benefit *by* our country. Those people would be unlikely to abuse our system of government services and would be likely to pay more into the system than they take.

Harry A. DeMell
New York, NY

Mr. Gillespie replies: My article begins with the premise, "If the United States is not going to allow open immigration...." Within a framework of *limited* immigration, I think that entry fees are a workable alternative to the current policy of family reunification. Entry fees would, I think, simultaneously motivate potential immigrants to hone the skills necessary for success in America and ameliorate growing anti-immigrant sentiment.

It would also sidestep the bureaucratic inefficiencies built into employment-based systems, such as the one proposed by Mr. DeMell, in which the government decides what skills are most in need. Contrary to Mr. Davies's assertion, I don't see the entry fee as analogous to travel costs experienced by 19th-century immigrants. I was instead repeating Gary Becker's important point that contemporary immigrants are already paying huge costs in the form of "long queues and bureaucratic procedures that often delay entry for years." I also don't think that proposing a more efficient way of allocating scarce visas necessarily means I accept, as Mr. Stevens charges, "the faulty premise that individual immigrants cause the high cost of the welfare state." In fact, I explicitly reject that premise by quoting statistics that undercut "the increasingly common portrayal of immigrants as welfare dependents mooching off the taxpayers."

Having said all that, I agree with the respondents that immigration policy is really only of concern in a welfare state. As I noted in my article, "The rise of the welfare state in the 20th century greatly complicate[s] the model of largely unfettered immigration." If we dismantled the welfare state—a proposition to which REASON is obviously dedicated—we would similarly dismantle most impediments to open immigration. As I wrote regarding 19th-century immigration, "Although there was always considerable anti-immigrant sentiment, there was also at least a grudging sense that anyone had a right to settle in America."

Protectionism Racket

The similarities in your back-to-back articles, "A Tale of Two Countries" and "P.S., Inc." (June), were striking. In the case of the Philippines, the ruling elite has enacted protectionist laws and regulations designed primarily for self-enrichment at the expense of the overwhelming body of the Philippine people—under the guise of the noble aim of keeping the Philippines for the Filipinos and not allowing foreigners to profit in an exploitative way.

In the case of the public schools, teachers' unions try to stop any form of choice or private-sector involvement in the school system. While they abhor profit on the part of any private enterprise that might improve results at lower costs, they certainly seek to maximize their own profit at the expense of taxpayers and children alike. Again, they claim a noble aim: to keep the dirty word *profit* out of the minds of children and keep them pure and pliable to the ultimate aim of socialism.

James T. Loberg
Anaheim, CA

Although I agree with William McGurn ("A Tale of Two Countries") that protectionism is harmful to the consumer and beneficial only to the vested interests that control uncompetitive enterprises, his article does not prove his case. If one is to argue against protectionism, one must somehow explain the economic success of Japan and South Korea. Both of those economies are fiercely protectionist and both have enjoyed tremendous success during the period in which the economy of the Philippines was spiralling downward. They have also managed to attract foreign investment by companies such as Ford Motor Co., General Motors, and RCA Victor even though foreign ownership in local companies is limited to minority interests.

It would appear to me that what has destroyed the economy of the Philippines is corruption. Although there is strong evidence that corruption existed in Japan and South Korea, its nature and extent seems to have been quite different from that which exists in the Philippines. Corruption in Japan and South Korea seems to occur when successful businesses make payments to political parties and elected officials to favor laws which help the industry in which the business operates. In the Philippines, corruption seems to take the form of individuals buying the right to operate a monopoly which is protected from competition from within the country as well as from without.

D. L. Freeman
Montreal, Canada

Mr. McGurn replies: Mr. Loberg has it exactly right. Protectionism is a racket, and the ones who agitate most loudly usually have something to protect. Unfortunately, one political problem with free markets is that marginal incentives for the person lobbying to protect his market from competition outweigh the marginal *communal* incentives in opening it up.

There are indeed many causes of the Philippines's misfortunes, and corruption certainly ranks at the top. But corruption itself depends largely on either closed or politically regulated markets, both of which the Philippines has in abundance. Nor do I take South Korea to be the unmitigated success Mr. Freeman supposes: Hong Kong, which started at roughly the same level, today has more than double the per capita income of South Korea, whose Japanese-style development is today giving it Japanese-style problems vis-à-vis its more open and competitive neighbors. The Philippines has also managed to attract some foreign investment; once inside the accepted circle, business can be great in a protected market, which helps explain why the Philippine stock market has been booming while Filipinos remain mired in poverty.

In the end, however, it does little good to ask about the causes of poverty. If that is the chief impression I conveyed in my article, I have missed the mark. The question that matters is how to become rich. And in the Philippines, that much is already clear: Open up to foreign investment without restriction. Were foreigners allowed to compete for labor in all markets and develop the Philippines's resources, wealth would increase and Filipinas with university degrees would not have to go into prostitution or work as maids for people overseas. Anyone disagree?

Chlorine Questions

Michael Fumento's column, "Chemical Warfare" (June), is dangerous for its illogic, false statements, and stunning omission of some very serious facts. I don't have the time to rebut each distortion, so I'll simply challenge you to read the International Joint Commission's 7th Biennial Report on the Great Lakes, published in 1994. Call their office for a copy: (202) 736-9024.

The IJC decision to phase out industrial uses of chlorine came after serious investigation into the effects of this chemical which, after being mixed with others in industrial uses, creates a possible 50,000 untested, persistent, toxic, newly derived chemicals. The IJC commissioners, all conservative appointees under Reagan and Bush, decided unanimously that the chemicals must be treated as a class, that they are so dangerous they act like toxic hormones; children in utero are affected. There is ample scientific backup for this statement and the commissioners made their decision after reviewing a growing body of well-researched data.

I also urge you to pay close attention to the final Environmental Protection Agency reassessment of dioxin, due out this summer, done by independent scientists with impeccable credentials. Apparently, the findings are so significant—dioxin is so toxic on so many levels—that EPA administrators are anxious to delay making them public for as long as possible. Industry is not going to be very happy. Not only is the immune system compromised at very minute levels by dioxin, it also has the capacity to wreak reproductive havoc. A number of studies have already been published indicating this; it's all available to any reporter who is willing to look up the bibliography.

One of the great myths developed by modern industry-paid public relations is that "what happens in animals does not necessarily translate into humans." That's dangerous thinking. Humans are part of the whole life chain. Any toxin strong enough to kill an insect will eventually—with sufficient exposure of small amounts over time—harm a child first, and eventually an adult. With repeat exposure to small amounts of these toxic, persistent substances, (parts per million, billion, or trillion) negative responses will occur in humans; it may take a few years. Of course, the symptoms will show up earlier if the dose is heavy.

The only folks who say dioxin is not dangerous are those doing public relations for industry or government, those whose studies are paid by industry, or those media that own chlorine-bleaching pulp and paper mills. For example, *The New York Times* is battling a $1.3 billion lawsuit brought by the Canadian Eskimos living downstream of its paper mills.

The many thousands of product liability suits brought by contaminated victims are always settled out of court because chemical companies do not wish the data to become public. Currently, there are billions of dollars worth of such suits pending, and when the EPA reassessment of dioxin becomes public, dioxin-producing industries will certainly feel the pinch.

Mr. Fumento's article does little to advance the cause of truth or help the thousands of innocent victims who did not choose to get prostate and breast cancer, rare forms of other cancers such as non-Hodgkins lymphoma or soft-tissue sarcoma, develop compromised immune systems, give birth to defective or learning-disabled children, and in general live compromised lives.

Phasing out certain forms of industrial chlorine is not only good for the future, it will ultimately be good for business. A number of European countries are already finding equally effective and much cheaper substitutes for their bleaching, solvents, and refrigeration. Greenfreeze is the name of a revolutionary new generation of environmentally friendly refrigerators. They use propane and butane as the refrigerant and in the insulation rather than CFCs or HCFCs. More than a million Greenfreeze refrigeration models are being sold throughout Germany, England, Holland, Austria, Sweden, Switzerland, France, and Australia. In their rush to see only the short term, our American companies will be left out of the competition.

You really should get with the program. True conservatives are just that; they want to protect and conserve the wealth, and that includes the wealth of human resources. It's too late for me. Because you are so cavalier with decent jour-

nalistic practice, I am cancelling my own subscription. I cannot trust your integrity.

Liane Clorfene-Casten, Chair
Environmental Task Force
Chicago Media Watch
Evanston, IL

Mr. Fumento replies: Ms. Clorfene-Casten's indignant letter is perhaps most telling in what it *doesn't* say. The two most important points in my article were that chlorine has no special properties that necessitate its being treated as a class of pollutant (any more than all environmentalists should be locked up because some do commit crimes) and that the over 1,500 natural organochlorines, such as table salt, are chemically indistinguishable from man-made ones.

She completely ignores the second point while barely touching on the first, saying the IJC "decided unanimously that the chemicals must be treated as a class, that they are so dangerous they act like toxic hormones; children in utero are affected." Presumably she means so dangerous *because* they act like toxic hormones, but only a precious few have even been accused of this. Her lengthy letter mentions only one by name, along with two small subclasses, CFCs and HCFCs.

Ms. Clorfene-Casten's appeal to authority is hardly attractive in that the IJC members were nonscientists. In their ignorance, they put their full faith in the self-anointed guardians of the environment, namely groups like the Environmental Task Force. Her reference to the upcoming dioxin report is just another effort to portray a single organochlorine as representing all organochlorines.

Readers should pay close attention to Keith Schneider's article in the May 11 *New York Times*, stating the report's conclusions "are based on mathematical assumptions that have not been published in scientific journals" and that it "already caused a storm of dissent in federal agencies, principally in the Food and Drug Administration and the Department of Agriculture, the agencies that have the primary responsibility for insuring the safety of food." For over a decade, radical environmentalists (including Ms. Clorfene-Casten in several articles for *The Nation*) and the EPA have sought to burn dioxin as a massively carcinogenic witch, only to watch helplessly as study after study found no carcinogenic effect on humans except, at most, at the very highest levels of exposure in workers exposed daily for over a decade. Now they are simply retrying the witch under new accusations, moving away from cancers and toward the effects on the fetus.

Far from being an industry-fabricated myth, the fact that "what happens in animals does not necessarily translate into humans" is shown by dioxin itself and the effect it has on different species. The impetus for the dioxin witch hunt was that it is amazingly lethal to guinea pigs. Yet, other studies have shown that 500 times the amount is necessary to have the same effect on the guinea pig's close cousin, the hamster. Overall, about 30 percent of that which causes cancerous tumors in rats during maximum tolerated dose testing does not do so in mice and vice versa. What, then, does this say for correlating between rodents and humans?

Ms. Clorfene-Casten also simply assumes there is no threshold below which carcinogens are no longer harmful, yet that flies in the face of everything we know about acute toxicity, in which the dictum is "the dose makes the poison." Dioxin specifically has been cited by several researchers as one that is probably harmless below a certain level of exposure.

The ad hominem about "folks who say dioxin is not dangerous" is just that. I, for one, was paid by REASON, and REASON's contributors are unknown to me. Saying don't trust anybody who prints on chlorine-bleached paper is practically the equivalent of saying don't trust anything in print—unless, of course, it's negative. It's become popular lately to attack *The New York Times* because Keith Schneider has become a real pain, but early during the Love Canal incident that same newspaper did some of the most alarming reporting on dioxin.

Dioxin-related lawsuits have been systematically filed by a group called Trial Lawyers for Public Justice. Settlements are normally sealed from view, but the fair presumption is these cases are settled out of court because it is easier to pay off their nuisance value than go to trial.

The implication of the list of cancers and other disorders is that all are caused by organochlorines. But none has been strongly connected to *any*, much less all or most, organochlorines. The Great White Hope of the radical environmentalists was Mary Wolff's 1993 study purporting to link breast cancer and DDT, but that was shot down in April by a much larger study. Both studies exonerated another environmentalist-targeted organochlorine, PCBs.

I trust most readers will recognize the resort to Bastiat's Broken Window theory. In this, the French economist mockingly noted that France's economy would boom if someone went around busting every window in sight, thereby creating tremendous employment opportunities for window makers and fixers and causing a ripple effect throughout the economy. Greenpeace's Greenfreeze refrigerator may be a big hit in Europe, but if Americans won't buy it there's probably a good reason. It's not that U.S. companies don't make it; they don't make VCRs, either.

It's true there are alternatives to organochlorines. Some will mean tremendous expense, including having to spend up to $800 to have car air conditioners converted. Some will mean doing without. Some will cost lots of lives because of inaccessibility to many pharmaceuticals and other products. All of this places a tremendous burden of proof on the would-be banners. Readers may judge whether Ms. Clorfene-Casten has met it.

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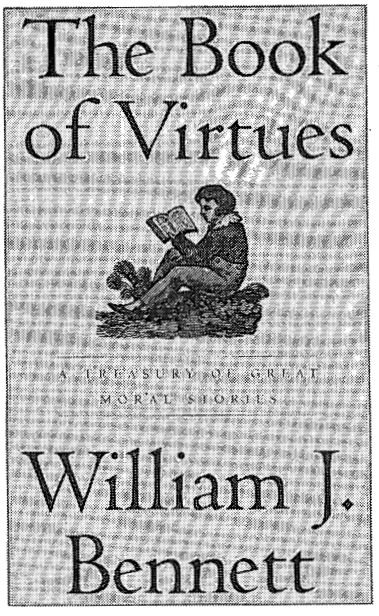

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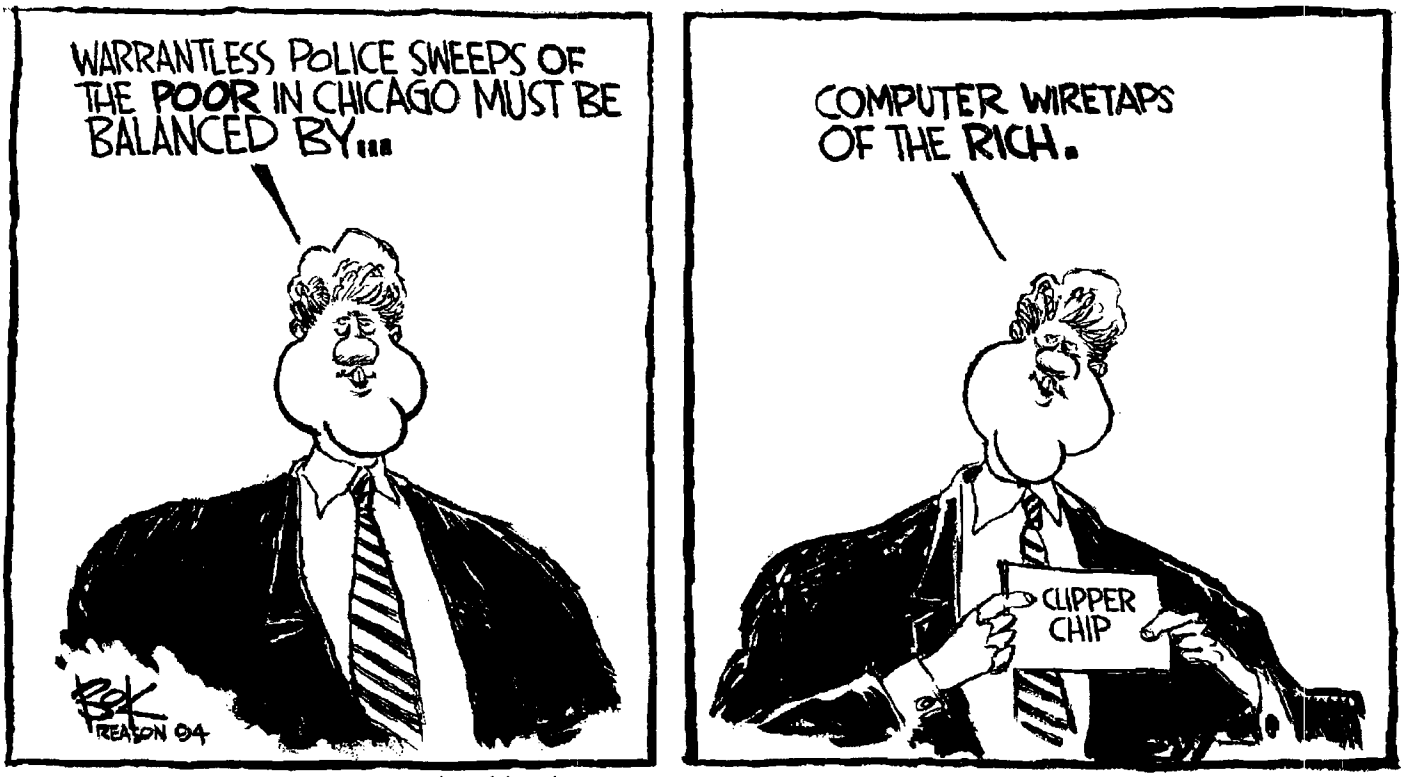
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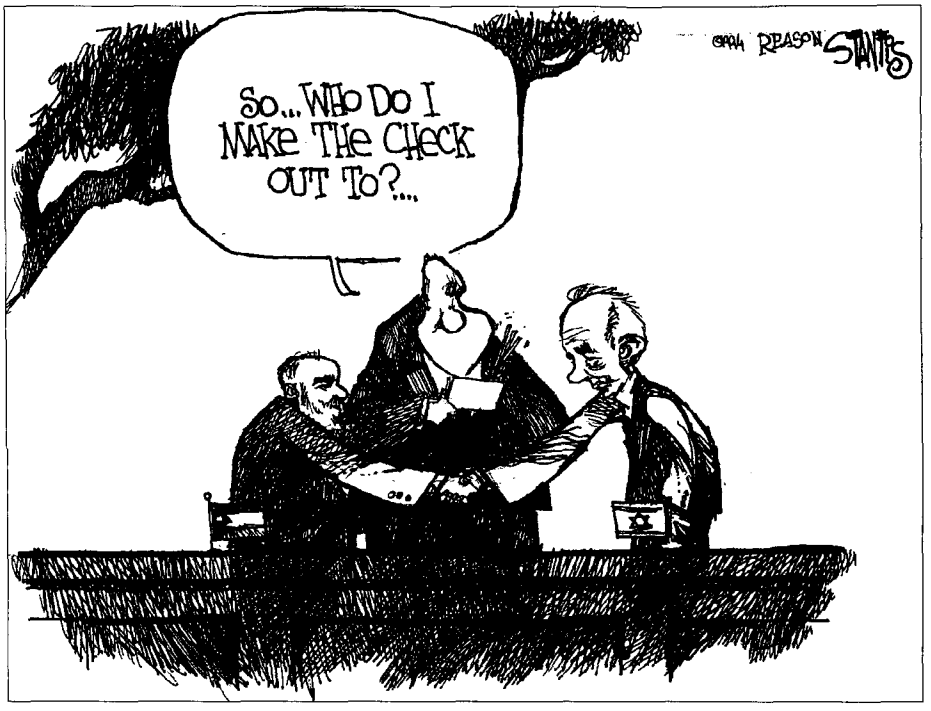


SCOTT STANTIS

■ **By law, cities must remove at least** 30 percent of organic waste from incoming sewage before treating it. This poses a problem for Anchorage because it has so little waste in its sewage. The Environmental Protection Agency won't give the city an exemption. So rather than build a new, state-of-the-art $135 million treatment facility capable of removing even traces of organic waste, the city has asked two local fish-processing plants to dump fish viscera into the water. The fish waste is then removed, and the federal regulation met.

■ **Issues debated by the national convention** of the National Education Association: abortion, nuclear waste, pesticides, and the economic embargo of Haiti. A motion to limit debate to subjects directly related to education was defeated.

■ **In Great Britain, 30,000 people turned** out to protest the new Criminal Justice Bill. Among the bill's provisions is a clause banning unlicensed gatherings of more than 10 people at which music "wholly or predominately characterized by repetitive beats" is played. The law also gives police the right to stop and search anyone within five miles of any event deemed a possible source of disturbance. The law is designed to stop raves, underground musical parties.

■ **The operators of the first private television** channel in the former Eastern Bloc know one thing: Czechs like to see naked people. One out of five people in the republic stays up past midnight each night to watch soft-core skin flicks broadcast by Nova TV. Any complaints? Says Nova head Vladimir Zelezny, "I've had several letters and phone calls complaining about the lack of erotic fare for women."

■ **The Brazilian military has its priorities. It** sends soldiers home on weekends to save on meal money. Pay is so low that many soldiers must moonlight at other jobs. Recruits receive only one uniform each and must train with fake weapons. But the generals, who ruled Brazil from 1964 to 1985, are spending big bucks—for a new rocket-guidance system, state-of-the-art warplanes, an Amazon radar network, and nuclear submarines.

■ **Environmentalists in Texas have found** a new threat to the endangered golden-cheeked warbler: backyard bird feeders. It seems that the feeders attract blue jays, ruffians of the winged world, who displace the smaller songbirds. The U.S. Fish and Wildlife Service promises to consider the danger of possible bird feeders when it decides whether to grant building permits in suburban Austin.

■ **It's a good thing policeman Paul Kiesel** isn't a very good shot. The St. Petersburg, Florida, patrolman fired upon and missed Hank Edwards during an otherwise routine traffic stop. The police officer mistook Edwards's cane for a shotgun.

■ **Have you gotten hold of a bad orange** lately? Better not tell anyone. Under a new Florida law, growers can sue anyone who says that fruits, vegetables, and other perishable foods are unfit for human consumption and who can't back up their claims with evidence.

■ **In Ft. Worth, Texas, the city council is** looking at a new way to reduce gang violence: Put gang leaders on the city payroll. The council is considering hiring six gang chiefs to serve as community counselors. The six would visit schools and civic organizations to warn kids not to join gangs. Of course, if the kids ignore the message, they too might wind up as city employees.

■ **Sen. Max Baucus (D-Mont.) tried to impress** visiting constituents with his commitment to the environment by telling them how he had helped dig channels for bull trout at a Montana ranch. When asked by the visitors if he had obtained the needed federal wetlands permit, Baucus admitted that he didn't know. Baucus is the principal sponsor of the bill that reauthorizes federal regulation of wetlands.

■ **In China, the government's war on dogs** continues. Dogs are banned in many cities there. For a long time, police there have usually killed all stray dogs. Now authorities want to shut down veterinarians and set up a reward system for informers who rat on illegal dog owners.

—Charles Oliver

Architectural Correctness?

Property owners challenge aesthetic restrictions on land use.

By Robert Pollock

DAVID AND DIANE WILLIAMS thought they were doing everything right. They wanted to build a new duplex on property they own in a residential neighborhood of Tiburon, California. Their application to the town's Board of Adjustments and Design Review met all technical requirements of the local building and zoning codes. But despite numerous revisions to meet board objections, their application was denied because of concerns about the project's appearance.

Evidently the Williamses had failed to design a home that was "harmonious" with the surrounding area but not "monotonous," as the guidelines require. Such a failure was surprising because the Williamses' final architect was not only a former chairman of the review board, he had written those guidelines himself.

The Williamses' plight is not an anomaly. Over the past 10 years, architectural appearance review has become an integral part of the local development process, says their lawyer, Nicolas Morgan. But purely aesthetic guidelines may not jibe with constitutional guarantees of due process and free expression, he suggests. Morgan will cite several recent cases as precedent when the Williamses go to court this fall.

In one case, Bruce Anderson had decided to build a small retail building on his property in Issiquah, Washington. After Anderson had invested a quarter of a million dollars in design costs, the city rejected his plans because the building did "not create the same feeling as the building environment around [the] site." This environment consisted of a gas station across the street, with two more gas stations, a bank building, an auto repair shop, a box-like Elk's hall, and the city's Victorian-style visitors center in view.

Particularly displeasing to local authorities was Anderson's alleged violation of the local building code which reads, "Colors shall be harmonious, with bright or brilliant colors used only for minimal accent." Anderson thought facing the building in off-white stucco was in keeping with such a guideline, but he willingly changed the color to Cape Cod gray to

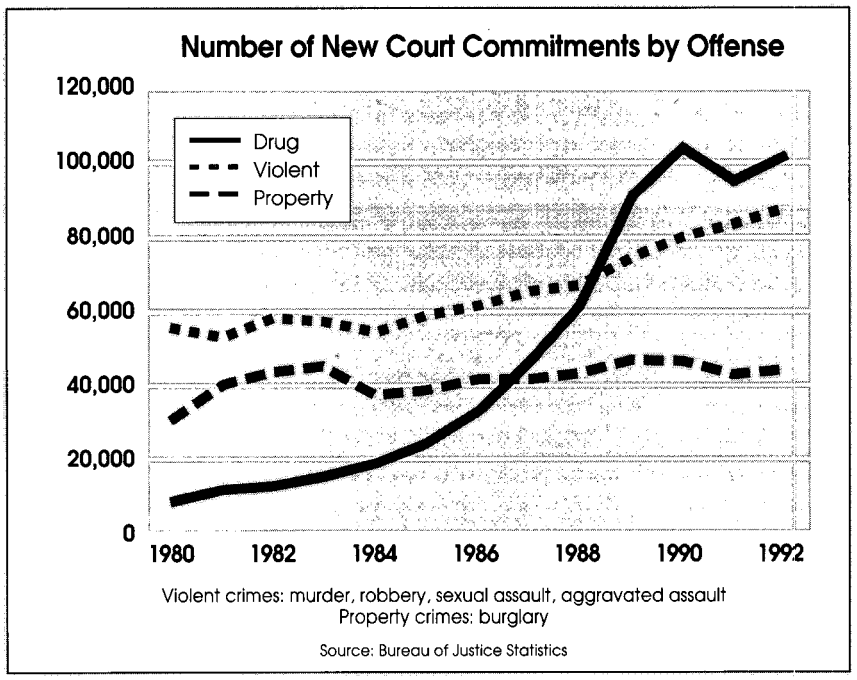
Lock 'em Up

War on drugs produces more inmates, not less crime

By Robert Pollock

We may never settle the question of whether or not there is a causal link between illegal drugs and other criminal activity. But even if such a link exists, locking up drug offenders doesn't appear to be the solution. Last year ended with a record 948,881 state and federal prisoners, up from only 329,821 in 1980. Although nearly half of the increase is due to more drug offenders entering prison, new commitments for property and violent crimes, as well as arrests for sexual assault, aggravated assault, and robbery, have continued to rise.

Overcrowding is particularly acute in federal prisons, where there are now more than twice as many drug offenders as there were total inmates in 1980. The United States' incarceration rate for prisoners sentenced to more than a year also reached a world record 351 per 100,000 residents in 1993—and that's not counting the approximately 450,000 people held in city and county jails on any given day. That means that primarily because of drug prohibition, U.S. citizens are more likely to be locked up than any other people in the world.



please commission members. Then they demanded a review of the trim color: "Tahoe blue may be too dark."

Anderson repeatedly altered his building plans, changing colors and design elements to suit the tastes of the commission members. But his efforts, like the Williamses', were to no avail.

In May 1993, however, the Washington Court of Appeals ruled that Issiquah's ordinance was so vague that it let the commission decide based on "whim, caprice, or subjective consideration." Thus, it violated the Due Process Clause of the Fourth Amendment. The court ordered that Anderson be allowed to build his building.

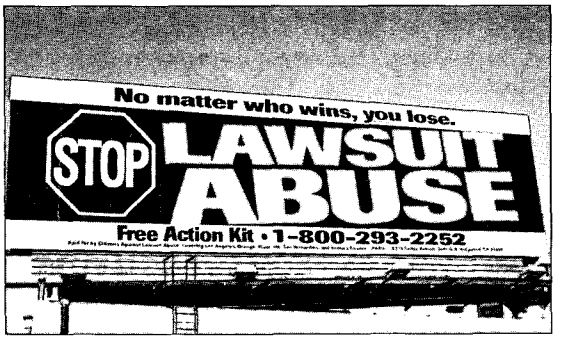
Morgan says aesthetic guidelines may also violate First Amendment protections. In a June 14 decision, the U.S. Supreme Court struck down a local ordinance in Ladue, Missouri, banning the display of signs on private residential property. Like the Tiburon and Issiquah laws, Ladue's ordinance was intended to prevent "ugliness, visual blight and clutter" while protecting the "special ambience of the community." In overturning the law, the Court noted that a "special respect for individual liberty in the home has long been part of our culture and our law," and voiced its concern with "laws that foreclose an entire medium of expression."

The Williamses argue that architectural design should be protected medium of expression, and the court may agree. In a preliminary review of the Williams case, a judge observed that the city had offered "no reason why a unique architectural design, expressing [the homeowner's] 'personal views and attitudes,' is not as worthy of First Amendment protection as 'live nude dancing.'"

Tort Reformers

Citizens organize to stop lawsuit abuse.

By Robert Pollock



Part of a Los Angeles campaign against frivolous lawsuits.

JURY AWARDS ARE ONE OF MANY THINGS that come in large packages in Texas. In 1990, two workers sued a sugar mill in the Rio Grande valley for being included in seasonal layoffs. They won $2.5 million. The award would have bankrupted the company, costing the jobs of 683 workers in a small town. Fortunately, the company was later able to settle out of court for less.

The potential disaster led Bill Summers, president of the local Chamber of Commerce, to form Citizens Against Lawsuit Abuse. Its message is simple: You don't have to be the target of a frivolous lawsuit to be a victim.

Since 1990, 10 more grass-roots anti–lawsuit abuse groups have formed in Texas. And the idea has spread to other states, including New Jersey, Mississippi, Louisiana, and California. "The core problem is social greed," says John Opelt of the Houston CALA. "People are trying to get rich instead of be made whole," echoes Bill Bloomfield, who founded the Los Angeles chapter early this year.

The problem is exacerbated by the contingency-fee system, Bloomfield says. People can file lawsuits at no cost to themselves, and lawyers get to keep as much as a third of any award. Everyone is encouraged to play the lawsuit lottery.

Bloomfield's billboard and television ads have already attracted more than 1,200 members. A look at the employment costs of lawsuit abuse helps to explain the positive response. A RAND Corporation study estimates that wrongful termination suits alone have reduced California's hiring levels by as many as 650,000 jobs, causing expenses equivalent to a 10 percent across-the-board pay raise. The 70,000 product liability suits filed annually in the United States are also job killers. The small-aircraft industry has all but disappeared, losing 18,000 jobs since 1980 because of liability suits, even though a National Transportation Safety Board study couldn't find one crash caused by manufacturing or design error.

Possible legislative reforms include forcing the loser to pay court costs and capping punitive damages. But reform efforts have been frustrated for years by the lobbying efforts of the American Trial Lawyers Association, which donated $2.4 million to candidates in the 1992 election cycle. This year, although a bill specific to the small-aircraft industry was passed, comprehensive reform bills were never allowed to come to a vote in either house of Congress. Pressure from the ATLA even caused Sen. Larry Pressler (R-S.D.) to defect from a bill he had co-sponsored.

But these obstacles don't faze CALA's Bloomfield, whose emphasis is on values rather than wonkish legislative solutions. "Through education, we can effect change even if nothing happens in Washington or Sacramento," he says. Opelt likens CALA's strategy to that of Mothers Against Drunk Driving, where "public outrage and indignation resulted in a change in attitude and behavior."

He and Bloomfield aim to create a social stigma against frivolous lawsuits and encourage such private alternatives as mediation and arbitration. CALA doesn't seek to restrict the ability of legitimate victims to sue. But as Bloomfield puts it, "A legal problem needs to be viewed as a problem, not an opportunity."

CITIZENS AGAINST LAWSUIT ABUSE

Balance Sheet

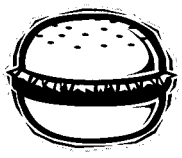
By Rick Henderson

Assets

Federalist Flurry. The 10th Amendment, which reserves powers not listed in the Constitution to states or to individuals, makes a comeback. The Colorado, Hawaii, and Missouri legislatures pass resolutions demanding an end to unfunded federal mandates. Eight other states may follow suit. Statists hate the prospect. Amy Issacs of Americans for Democratic Action tells *The Washington Times* that the movement threatens to "bottle up Congress and tie up needed legislation for years."

Armed Resistance. Lithuanians and Estonians fight crime with guns. Both Baltic nations let adults obtain permits to own and carry handguns. A gun-store owner tells The Associated Press, "Guns make people feel more secure and confident."

Radiation Therapy. Treating food poisoning caused by E. coli bacteria in ground beef may cost $580 million a year. A panel of experts organized by the American Gastroenterological Association urges irradiation of raw hamburger. *The New York Times* says the panel concludes irradiation "might be the only way to control E. coli contamination in butchered beef without affecting its quality." Take that, Jeremy Rifkin.



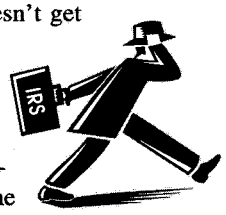
Pill Pushers. The Senate deals the Safety Nazis a blow. It unanimously passes a bill that lets retailers display literature touting the health benefits of food supplements. Health-food stores can also sell books promoting vitamins and minerals without fearing reprisals from the FDA.

Liabilities

Carded. Get ready for a national identity card. The U.S. Commission on Immigration Reform proposes a computerized employment registry designed to track where everyone works and deter illegals from getting jobs. Undocumented aliens will still find work. But the information bureau's inevitable failure will fire up statists who want Big Brother to watch you.

War Footing. While Clintonites lobby for GATT, they chop off trade with Canada and Japan. Responding to pressure from a handful of Montana farmers, the administration cuts wheat imports from Canada in half, from 2.7 million to 1.5 million tons. And by November 1, Mickey Kantor and company threaten to impose tariffs on hundreds of Japanese products. Theoretically, the White House backs open trade; in practice, however...

Tax Attacks. Congress thinks the Internal Revenue Service doesn't get enough of your money. To "enhance enforcement," it appropriates $2 billion to hire 5,000 new IRS agents ($400,000 apiece!). Iowa Republican Sen. Chuck Grassley's amendment to strip this funding from the Treasury Department budget fails 43-54. Over the past 12 years, reports the Congressional Budget Office, the IRS has increased its staff faster than any federal agency other than the Defense Department.



Insurance Fraud. Lawmakers in earthquake-riddled California and hurricane-battered Florida defy nature and legislate cheap insurance rates. It doesn't work. Insurers try to flee the states or stop writing new policies. Both states have set up subsidized insurance funds that will go bankrupt and be bailed out by private insurers the next time disaster strikes. Investment tip: Shy away from insurance companies that do business in either state.

Wait Problems

The hazards of backyard "wetlands"

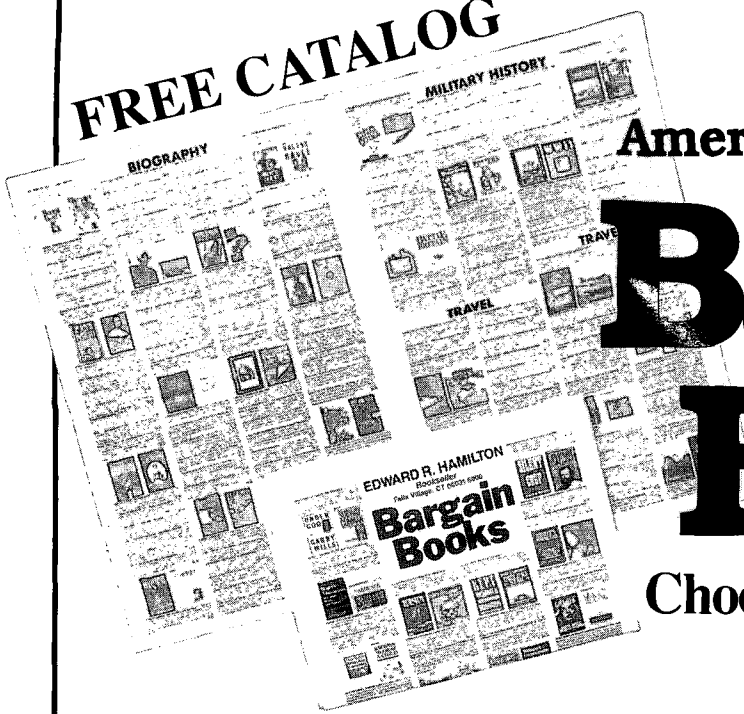
By Lisa Snell

FLORIDIAN LLOYD WILSON WANTED to build a home on a lot he owns. Then he found that the U.S. Army Corps of Engineers had designated 260 square feet of his property—the size of a large room—as wetlands. The Army Corps made Wilson wait more than nine months before letting construction proceed.

A property owner who has any amount of land that has been designated as wetlands must navigate a public-notice-and-comment period, hire consultants to negotiate with regulators, and wait for the Army Corps to consult with as many as four other agencies before deciding whether to allow development. Environmental attorney Virginia S. Albrecht and environmental consultant Bernard N. Goode reviewed all of the Army Corps' 1992 applications to build on property that had been designated as wetlands. They found that one-fourth of the applications had wetlands of less than a quarter acre and just under half had less than one acre of wetlands. The average property owner waited 373 days to get through the permit process.

Albrecht and Goode also discovered that 61 percent of the 1992 applications were withdrawn. While the Army Corps may deny only 5 percent of all applications, "The plain fact is that in most cases a withdrawn application, like a denied application, means that the applicant cannot go forward with his or her project."

Meanwhile, reports a recent Competitive Enterprise Institute study, the United States is actually creating more wetlands than are being destroyed. For 1994, several Agriculture Department programs are expected to restore an estimated 167,000 acres of wetlands—representing a potential net gain of 27,000 wetland acres. In that context, penalizing property owners like Wilson with expensive delays because of tiny "wetlands" on their land seems both unjust and unnecessary. ®



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The Great Tax Revolt of 1994

Will anti-tax initiatives sweep the states this fall?

By Stephen Moore & Dean Stansel

Two years ago, when businessman-turned-political-activist Douglas Bruce launched Amendment I in Colorado, a ballot initiative requiring that all new and increased state and local taxes and debt be approved by popular vote, his political opponents waged a holy war against him. Bruce was characterized as a "terrorist" who would "lob a hand grenade into a schoolyard full of children." Defeating the proposal was said to be the moral equivalent of "fighting the Nazis at the Battle of the Bulge."

And these, mind you, were just the comments of the governor, Democrat Roy Romer.

The public-employee unions, education lobby, and bond traders were far less civil. One bond trader, fearful that the voter-approval requirement for new debt would put him out of business, even suggested that if Amendment I were adopted, the pope might be assassinated when he came to Denver, for lack of police. Despite the hyperbole, hysteria, and nearly $1 million spent to defeat the initiative (versus less than $300,000 spent by taxpayer groups in support), Amendment I was approved by 54 percent of the voters in November 1992.

It has had an immediate policy impact. Tax increases have been stopped dead in their tracks. In November 1993, one year after Amendment I's passage, Colorado voters were asked to reinstate a relatively trivial 0.2 percent tourism tax that had expired. They rejected the $11-million tax hike by a margin of 55 to 45. Last year Colorado property taxes rose by less than 1 percent—the smallest increase in 20 years. Without new revenue sources to tap easily, state government in Denver is changing the way it does business. "These days, when agencies want more funds, they are forced to cannibalize each other," says Bruce.

But the real impact of Amendment I, and the great untold political story of the year, is how rapidly this initiative is invading other states. Oklahoma and Washington voters have already joined Colorado in passing it. Similar initiatives have qualified for the November ballots in Nevada and Oregon and will likely also ap-

ART PROULX

pear on the ballot in Florida, Missouri, Montana, and North Dakota. Grover Norquist, president of Americans for Tax Reform, which advises state taxpayer groups across the country, predicts that "the way things are going, by 1996 every state with initiative and referendum will have passed a version of the Colorado law." So far, the measure seems to command the same kind of broad-based populist appeal as term limits.

Welcome to the great tax revolt of 1994. Not since Howard Jarvis successfully spearheaded California's Proposition 13 property tax-cut initiative in 1978—and unleashed a taxpayer protest that eventually swept through more than half the states and catapulted Ronald Reagan to the White House—have there been more citizen-driven efforts to roll back taxes. Consider the wide array of anti-tax actions on tap across the country:

• This year taxpayers in 11 states, with a total population of nearly 50 million people, may be voting on some form of anti-tax or spending-restraint ballot initiative.

• In addition to voter-approval requirements for taxes, a parallel anti-tax measure gaining momentum is the idea of requiring a two-thirds vote in the legislature to raise taxes. In November 1992, 72 percent of Arizona voters approved this supermajority requirement. Similar initiatives may appear on the ballot in Montana and Nevada this year. (Significantly, Congress has this requirement reversed for Washington, D.C.: A three-fifths supermajority vote is required to *cut* taxes, but only a majority is necessary to raise them.)

• In June, for the first time ever, California voters rejected every bond initiative on the ballot, $6 billion worth. Those included proposals to pay for everything from schools to parks to earthquake relief to crime prevention. Reported *The Wall Street Journal*: "State legislators are reeling in disbelief."

• Meanwhile, almost half the states have enacted tax cuts this year. New Jersey's newly elected Gov. Christine Whitman delivered on half her promised 30 percent income tax-rate reduction; Michigan's John Engler chopped the property tax in half; and Mississippi's Kirk Fordice eliminated the state capital gains tax. Arizona's Fife Symington has cut the state income tax three years in a row and has now pledged to completely abolish the state income tax if reelected. Art Laffer's supply-side movement—a subject of widespread ridicule among the Washington intelligentsia—has never had more dedicated practitioners.

• Even prominent Democrat lawmakers have caught the tax-cutting fever. In Georgia, Gov. Zell Miller won approval of a $100-million family-income tax cut that over two years will increase exemptions for elderly residents by $2,000 and dependent children by $1,000. Meanwhile in California, Willie Brown, speaker of the assembly for more years than anyone cares to remember and perhaps the sponsor of more expensive tax hikes than any politician in American history, has suddenly discovered supply-side religion. Brown proposes a 6-percent investment tax credit as the surest way "to keep and expand jobs in California." He predicts that the tax credit will "generate additional income, property, and sales tax revenue for the state"—and no, that's not Jack Kemp talking.

• All told, 1994 will be the first year in more than a decade that state tax burdens will actually fall.

There are several explanations for this sudden and intense taxpayer discontent. One is simply pent-up frustration with gigantic expansions of state budgets in recent years. "In the 1980s, tax dollars rolled into state treasuries in wheelbarrows, and were quickly spent," Connecticut Gov. Lowell Weicker, hardly a fiscal tightwad himself, has observed.

He's right. In the Reagan era of "greed and over-consumption," few Wall Street fat cats could match the spending binge of many state governments. Though some state spending increases were the result of federal mandates in areas such as welfare and Medicaid, frugality did not otherwise reign among the states. In Florida, the budget was $7 billion in 1980; today it's $30 billion. In 1980 Arizona had a $3-billion budget; today, it's $10 billion. Connecticut's expenditures have roughly quadrupled since 1980. Even adjusting for inflation, most states have budgets roughly twice as large as they did 15 years ago with virtually no corresponding improvement in services—indeed, public-opinion polls suggest a deterioration in schools, crime prevention, and the like. This is natural grist for a storm-the-Bastille taxpayer revolt.

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Also driving the tax rebellion is an increasing recognition that the soak-the-rich tax strategy employed by many states during the past recession is shrinking state economies. A 1993 Joint Economic Committee study reports that since 1990 alone, the top 10 tax-hiking states have created zero net new jobs; the top 10 tax-cutting states gained 650,000.

Nearly two-thirds of the jobs lost during the 1991–92 recession disappeared from just two states: California and New York. There are many factors behind these states' decline, but certainly it's no coincidence that

both have among the highest tax burdens in the country. Boise, Idaho; Reno, Nevada; and Salt Lake City, Utah are three of the fastest growing cities in America. With the lure of very low taxes and a business-friendly regulatory climate, they are successfully cherry picking off of California's industrial base. California Gov. Pete Wilson's tax policies have done more for the prosperity of those cities than 1,000 economic development offices.

The real revolutionaries transforming state politics are ordinary, unelected citizens relying on grass-roots democracy to change the way states do business. While a politician's legacy can be dismantled once he's gone, the wave of populist anti-tax ballot initiatives could foil the tax-raising efforts of teachers, unions, Naderites, and other pro-spending lobbies for years to come.

Then there is the economic revival in Michigan. Inheriting a $1.8 billion budget deficit four years ago, Engler spurned the Florio-Weicker-Wilson putting-taxes-first fiscal solution and took a chainsaw to the budget, carving out savings in every state program from welfare to arts subsidies. He also cut taxes—11 times in fact, including his recent controversial $1.1-billion property-tax cut. (See "Engler's Angle," August/September.) Those policies now appear to be paying off. Once derided as the epicenter of the rust belt, today Michigan has a lower unemployment rate (5.5 percent) than the national average for the first time since Ford introduced the Mustang convertible—in 1966. And the state is now debating what to do about this year's $300-million budget *surplus*.

Perhaps the single largest impetus for the sudden wave of tax-cutting frenzy for politicians is pure political survival. Since 1990, voters have ousted eight tax-raising governors at the polls. The election that sent political shock waves throughout state capitals nationwide was, of course, Christine Whitman's triumph over Jim Florio in New Jersey last November. Florio came to power in 1990 as the self-proclaimed anti-Reagan, pledging to replace supply-side doctrine with a new-age progressive populism. His agenda of combining soak-the-rich tax hikes with Robin Hood wealth-redistributing education and social welfare spending programs was greeted with worshipful applause in Washington and in the media. A month after his record $2.8-billion tax package passed, New York Gov. Mario Cuomo praised Florio as a "bold and instant national hero." He even received the annual JFK Profile in Courage award.

Christine Whitman's victory shattered the Florio delusion. Exit polls from that election revealed just how thoroughly voters had trounced Florio's progressive liberal vision: 60 percent of the electorate said they preferred "fewer government services with lower taxes," while only 33 percent said they wanted "more of both." But what is really discombobulating to the left is that as Whitman has made good on her ambitious tax-cutting agenda, her approval rating has soared to over 70 percent—even as her "right-wing, supply-side agenda" is reviled with almost daily regularity in *The New York Times* and New Jersey newspapers. So popular is her tax-cutting program that now Whitmanomics is being copy-catted in GOP gubernatorial campaigns in Connecticut, New York, and a handful of other states. Whitman, a housewife by trade, is even seriously discussed as a vice-presidential candidate.

The accomplishments of Whitman, Engler, and other tax-cutting governors are impressive. But the real revolutionaries transforming state politics in America today are ordinary, unelected citizens like Douglas Bruce. They are relying on grass-roots direct democracy to permanently change the way states do business. While a popular politician's legacy can be quickly dismantled once he's gone, the latest wave of populist anti-tax ballot initiatives could foil the tax-raising efforts of teachers, unions, Naderites, and other pro-spending lobbies for many years to come.

Consider Montana, which is well on its way to ensuring that the taxman is held at bay for the foreseeable future. This November, there are *three* tax-related initiatives on the ballot. It all started when a first-ever state sales tax plan was put up for public vote in a special election in June 1993. The legislature sneakily passed a $73-million income tax hike that would go into effect if the sales tax were defeated—a virtual certainty according to the polls.

Not only was the sales tax defeated 75-25, but 20 percent of Montana's voters signed petitions to suspend the $73-million "blackmail tax" and put it, too, to a public vote this November. Public sentiment is running high in favor of repeal, though Rob Natelson, the law professor leading the petition drive, has been labeled a "tax dodger" by the Montana Education Association, and one Republican legislator has threatened to introduce legislation to eliminate the law school where Natelson teaches.

Two other tax-limitation measures are on Montana's ballot. CI-66 would require voter approval for any new or increased state tax; CI-67 would require a two-thirds supermajority of the relevant lawmakers to pass any new or increased state or local taxes and fees or to exceed the previous budget's level of spending. While there is some disagreement among anti-tax activists as to whether it is wiser to rely on voters' discipline (as CI-66 would) or politicians' discipline (as CI-67 would), both measures enjoy wide public support. Thus, both are likely to pass, giving double protection against the expansion of state government in Montana.

Passing such ballot initiatives tilts the political play-

ing field in the taxpayers' direction. Before enacting the "It's Time" supermajority initiative in 1992, the Arizona legislature had raised taxes eight times in nine years. "But these days," boasts taxpayer advocate Sydney Hoff Hay, one of the principal sponsors of It's Time, "the legislators don't even bother to *propose* new taxes." Arizona Gov. Symington agrees. "The little secret [of the supermajority requirement] is that my income tax cuts are pretty much irreversible," he says. Government in Arizona will be ratcheted downward, not upward.

The supermajority requirement makes it difficult for state lawmakers to tax even the most demonized industries: tobacco companies, big oil, utilities, and the like. Says ATR's Grover Norquist: "Any industry that's large enough to be worth looting probably has the political clout to muster the necessary one-third-plus-one votes of the legislature to inoculate themselves from tax hikes."

Supermajority vote requirements aren't a fail-safe protection against higher taxes, of course. Pete Wilson was able, after all, to wrangle the two-thirds votes he needed out of the California legislature to secure his $7-billion 1990 tax hike.

Still, the political establishment views anti-tax ballot initiatives with a combination of fear and loathing. Public-employee unions, school boards, lobbyists, and even local chambers of commerce are mobilizing to defeat these measures. Their defense strategy is one of containment: Spare no expense to defeat the tax initiatives wherever and whenever they appear on the ballot.

In Florida, the Tax Cap Committee is sponsoring four amendments, probably the most ambitious anti-tax effort in any state this year. The two most controversial would require taxpayer approval for new and increased taxes passed by the legislature and would require a two-thirds popular vote for any constitutional amendments that impose a new tax. Opponents are attacking the messenger rather than the message. Nearly 90 percent of the Tax Cap Committee's finances are alleged to have come from U.S. Sugar Corporation, a firm that was the target of a proposed amendment—since struck down by the state Supreme Court—seeking to impose a tax on sugar to fund pollution abatement in the Everglades. Thus, *The Miami Herald* suggested that the hidden motivation behind the two-thirds vote requirement to impose new taxes by constitutional amendment is to "derail efforts to clean-up the Everglades."

Tax Cap chairman Dave Biddulph objects that this charge is "blatantly false," noting an Everglades cleanup bill has already been passed by the legislature and signed by the governor this year. He further explains that government regulations make it very difficult and expensive for citizens to get initiatives on the ballot. "We knew from all the experience that if you don't end up with some money some place along the line, it never is going to happen," Biddulph says. (The proposed amendment to tax big sugar also received most of its money from an out-of-state multimillionaire commodities trader.)

Despite the large amount of funding from U.S. Sugar, this is, in many ways, a genuine grass-roots political movement. Tax Cap chairman Dave Biddulph emphasizes that his organization existed before U.S. Sugar Corporation realized that it could be a strategic ally. Tax Cap has 9,000 individual financial contributors, and nearly a million Floridians have signed the Tax Cap ballot petition. One such taxpayer asked petitioners, "Is there anything I can sign to keep from paying taxes at all?" He later said, "I'm just fed up with taxes eating up more than half of everything I make. I can either get in a boat and sail away or I can do something to protest."

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Florida's legislature itself is attempting to scuttle the Tax Cap initiatives. They placed their own spending cap—a much weaker one, excluding several key areas of state spending—on the November ballot. The legislators even tried to install a "poison pill" provision into their initiative that would allow it to supersede any other tax limit approved by the voters. But thanks in part to a Tax Cap Committee–organized phone blitz on Tallahassee, that provision was dropped.

A more imminent threat to the Tax Cap Amendments is State Attorney General Bob Butterworth, who is challenging the legality of the measures before the Florida Supreme Court. He argues that the wording of the ballots is confusing and that they effectively deal with more than one subject. (One of the four amendments sponsored by Tax Cap is specifically designed to allow a citizen-sponsored ballot amendment to deal with more than one subject when the state's taxing power is concerned.) The court appears to be a huge hurdle: Judges have struck down three of the last four Florida ballot initiatives on technical grounds.

Another common tactic employed by opponents of anti-tax measures is to frighten the public about the alleged dire fiscal conse-

quences of passing them. The Missouri Education Association has organized and funded a front group called "Citizens to Protect Missouri's Future" to defeat the state's tax and spending limitation initiative known as the Hancock II Amendment. The group complains that if the amendment passes, University of Missouri tuitions will double, thousands of government employees will be laid off, prisons will shut down, hardened criminals will be turned loose on the streets to prey on the public, and—horror of horrors—$4.5 billion of free federal highway aid will have to be sent back to Washington.

In 1992 Connecticut voters approved an initiative limiting spending growth to the growth rate of personal income. But the measure was ruled inoperative until the legislature defines what "growth of personal income" means—which it conveniently refuses to do. Connecticut's budget expanded by 7.2 percent last year instead of the 3 percent the limitation would have allowed.

To bolster their point about the devastating impact that tax-limitation measures can have on state governments, opponents often point to California's Proposition 13. Prop. 13—the granddaddy of citizen tax-limitation initiatives—rolled back local property taxes to 1 percent of assessed value, limited assessment increases to the lower of 2 percent or the annual inflation rate, and required two-thirds voter approval for new local taxes and a two-thirds legislative majority for new or increased state taxes. A *Sacramento Bee* editorial captured the essence of the attacks on Prop. 13: "There is almost nothing in the state that hasn't been affected by Prop. 13 for the worse," the newspaper stated.

Similar stories have appeared nationally in *The New York Times Magazine* and *Money* magazine. The *Money* article, titled "The Tax Revolt that Wrecked California," was crammed with sorrowful tales of a tax revolt run amok. Wrote Richard Reeves: "Fifteen years later, the lessons of Prop. 13 read like cliches: There's no free lunch; you get what you pay for. Inevitably, as revenues fell, spending and critical public services were cut. In California, those cuts have led to crises in education, medical care, and public safety. They have triggered a civil war pitting the old against the young, longtime residents against new, whites against blacks and browns, haves against have-nots." For some reason Reeves was unable to find a connection between Proposition 13 and the recent earthquakes.

California taxpayers no doubt only wish that Prop. 13 had been half as effective in rolling back government as Reeves suggests. Joel Fox, president of the Howard Jarvis Taxpayer Foundation, notes that property tax revenue has been climbing by about 10 percent a year for a decade and the California budget has tripled from $15 billion to $54 billion a year since 1978, when Prop. 13 rocked the nation. State and local governments in California have many problems these days, but being starved for revenue is surely not one of them. (See "Pushing the Limit," November 1993.) And perhaps the citizens are the best judges of whether their state has been ruined by Prop. 13: Opinion polls still show that if it were voted on today, Prop. 13 would pass with the same two-thirds majority it did 15 years ago.

Oddly enough, considering the avalanche of criticism in the media about the allegedly draconian effects of Prop. 13, some skeptics oppose these tax limits for the opposite reason: that they have little fiscal impact one way or the other. These critics point to the multitude of methods politicians have invented to evade tax and spending limits. For example, most of these measures cap only the "general fund" budget, typically about 40 percent of the state budget. That provides a major loophole for politicians wanting to increase spending and revenue.

Perhaps the most blatant end run around a tax and spending limit occurred recently in Connecticut. In 1992 nearly 80 percent of Connecticut voters approved an initiative limiting spending growth to the growth rate of personal income. But the state attorney general has ruled the measure inoperative until the legislature defines what "growth of personal income" and other such terms mean—which it conveniently refuses to do. While the Hartford politicians dragged their heels, Connecticut's budget expanded by 7.2 percent last year instead of the 3 percent the limitation would have allowed. Faced with a legislature that stubbornly refuses to enact a constitutional amendment approved by a huge majority of the voters, a freshman Republican state legislator and a group of taxpayers have sued the legislature for defying the state constitution. The state filed motions to dismiss the suit on the grounds that it infringed on the state's sovereign immunity and that the issue was a political matter outside the purview of the court. The court has already ruled against the state on the first motion; at press time, a decision on the second one was expected shortly.

Given opposing complaints that they have done too much and too little, what is one to conclude about the performance of tax and spending limits? Somewhere between the claim that their impact has been apocalyptic and the claim that their impact has been trivial lies the truth. Our just-released Cato Institute study compares the growth of per-capita spending and taxes in the 18 states that adopted binding tax and expenditure limits in the last tax revolt versus those that did not. We found that spending continued to grow in the tax-limit states, but at a slower pace than in other states. We also found that real per-capita

Fiscal Discipline Mechanisms in the States

State	Tax & Expenditure Limit	Supermajority Requirement	Voter Approval Requirement
Alaska	✔		
Arizona	✔	✔	
Arkansas		✔	
California	✔	✔	
Colorado	✔		✔
Connecticut	✔		
Delaware	✔	✔	
Florida		✔	●
Hawaii	✔		
Idaho	✔		
Louisiana	✔	✔	
Massachusetts	✔		
Michigan	✔		
Mississippi		✔	
Missouri	✔ ●		●
Montana	✔	●	●
Nevada	✔	●	
North Carolina	✔		
North Dakota			●
Oklahoma	✔	✔	✔
Oregon	✔		●
Rhode Island	✔		
South Carolina	✔		
South Dakota		✔	
Tennessee	✔		
Texas	✔		
Utah	✔		
Washington*	✔		✔
Total in 1994	**23**	**9**	**3**
1994 ballot measures	**1**	**2**	**5**

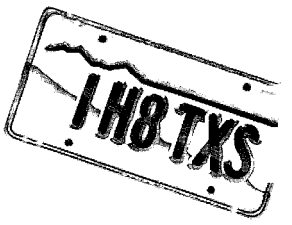
✔ Measure already in place.

● Measure seeking 1994 ballot status (source: Americans for Tax Reform).

*Washington State's initiative 601, passed in 1993, requires voter approval for tax increases that cause spending to exceed the spending limit (population growth plus inflation) but not for all tax hikes.

Note: The following states have none of these three fiscal discipline mechanisms currently in place or on the ballot in 1994: Alabama, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Minnesota, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Vermont, Virginia, West Virginia, Wisconsin, Wyoming.

taxes in states with tax limitations grew by 11.9 percent over the five years before enactment but *fell* by 2.8 percent over the first five years after enactment. As a result, the state tax burden per family of four in tax-expenditure limit states was $650 lower (five years after the limit was enacted) than it would have been if state tax growth had not been reversed. Admittedly, that's a far cry from the revolutionary change in state government that had been sought and promised by the promoters of measures like Prop. 13, but it is progress.



Prop. 13–era limits were ineffective because they left the ultimate authority for slowing the growth of Leviathan with Leviathan itself. To address that problem, the current movement is toward measures that leave the ultimate authority with the voters. These measures have the potential to become the most effective restraints on government expansion ever.

Nonetheless, taxpayer frustration with the relative inability of Prop. 13–era limits to more effectively deter the expansion of state government over the past 15 years has sparked the current anti-tax ballot strategies. And today's taxpayer groups have learned from the experiences of their predecessors. They recognize that the main cause of the ineffectiveness of Prop. 13–era limits is that they left the ultimate authority for slowing the growth of Leviathan with Leviathan itself. To address that problem, the current movement is toward measures that leave the ultimate authority with the voters. These new measures have the potential to become the most effective ironclad restraints on government expansion ever.

The latest polls suggest that most of these initiatives stand a good chance of passing. The Oregon anti-tax measure has 66 percent support; Missouri's Hancock II amendment has 82 percent support; and the Nevada and Florida voter-approval requirements both command near 90 percent support. But they are hardly done deals. The history of initiatives is that approval levels often fall off sharply as election day approaches.

Remarkably, while this citizen-driven anti-tax uprising sweeps through state capitals from Tallahassee to Carson City, Washington, D.C.'s attitude has been one of oblivious unconcern. In fact, CNN political guru William Schneider recently stated that "I see no great tax revolt out there." And he gets paid a lot of money for such opinions.

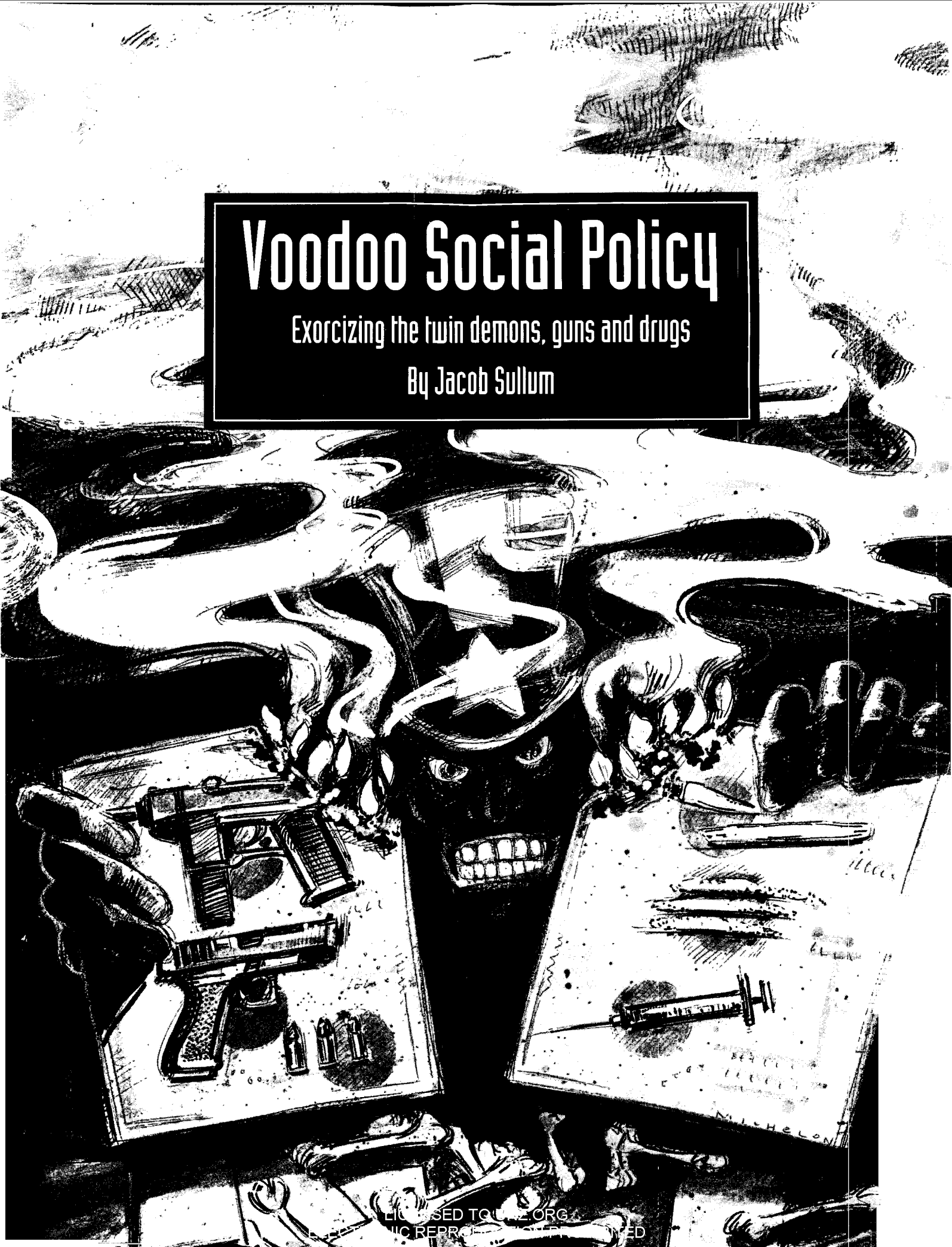
But stay tuned. This November, even Washington may be feeling the effects of the tax revolt of 1994. ®

Stephen Moore is director of fiscal policy studies and Dean Stansel is a fiscal policy analyst at the Cato Institute.

Voodoo Social Policy

Exorcizing the twin demons, guns and drugs

By Jacob Sullum



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When Rep. Ronald Coleman changed his mind and decided to support the so-called assault weapon ban approved by the House last spring, the Texas Democrat said he wanted to "make it harder for drug thugs and gangs to get the machine guns that wantonly kill our police officers and children." Coleman was wrong to think that the legislation he was about to vote for had anything to do with machine guns, but let's pass over that point for now. His remark is interesting for another reason: It concisely expresses and draws upon the symbolic power of both firearms and mind-altering chemicals, as represented by the gun-toting drug dealer, the nightmare of every parent and suburbanite.

Coleman was seeking to discredit guns by associating them with drug dealing. But the image works both ways. Drug warriors try to instill fear of illegal substances by linking them to gun violence. Thomas Constantine, director of the Drug Enforcement Administration, recently told *The Washington Times*: "Many people talk about the nonviolent drug offender. That is a rare species. There is not some sterile drug type not involved in violence who is contributing some good to the community. That is ridiculous. They are contributing nothing but evil." Thus, supporters of gun control and drug control both use the threat posed by violent, lawless people to justify banning inanimate objects.

Gun control and drug control are usually associated with opposite ends of the political spectrum. Presidents Reagan and Bush were eager to pursue the war on drugs but generally wary of gun control. President Clinton has made gun control a major goal, while his drug strategy is almost invisible. But these two policies have much in common at both a philosophical and a practical level. Both blame inanimate objects for complex social problems, promising to control crime and disorder by controlling their symbols. And both are ultimately harmful, for many of the same reasons.

MARC MICHELON

Given the symbolic power of guns and drugs, it's not surprising that efforts to control them have been shaped by racism and xenophobia, by fear of outsiders and the disruption associated with them. In the United States, attempts to ban inexpensive handguns have historically been motivated by fear of blacks and members of other minority groups.

Given the symbolic power of guns and drugs, it's not surprising that efforts to control them have been shaped by racism and xenophobia. In the United States, attempts to ban inexpensive handguns have historically been motivated by fear of blacks and members of other minority groups.

After the Civil War, several Southern states passed laws aimed at limiting access to cheap firearms by emancipated blacks. In 1870, Tennessee banned the sale of all but the most expensive handguns, which blacks generally could not afford. Arkansas enacted a similar ban in 1881. In 1902, South Carolina passed a law forbidding pistol sales to anyone except "sheriffs and their special deputies." In 1893, Alabama imposed heavy taxes on handgun sales with the aim of making them too expensive for blacks or poor whites to buy. Texas followed suit in 1907.

In the early 20th century, as David Kopel reports in his 1992 book, *The Samurai, the Mountie, and the Cowboy*, concerns about immigrants from central, southern, and eastern Europe fed support for gun-control measures in the Northeast. In 1903, for example, the *New York Tribune* complained about pistols found "chiefly in the pockets of ignorant and quarrelsome immigrants of law-breaking propensities" and condemned "the practice of going armed ...among citizens of foreign birth." In 1911, the same year *The New York Times* noted a disturbing fondness for handguns among "low-browed foreigners," New York passed the Sullivan Law, which required handgun owners to obtain police permits. The law gave local authorities a great deal of discretion to prevent "undesirables" from legally owning handguns.

The first person sentenced under the law, an Italian immigrant, was lectured by the judge: "It is unfortunate that this is the custom with you and your kind, and that fact, combined with your irascible nature, furnishes much of the criminal business in this country." Kopel reports that 70 percent of those arrested in the first three years after the Sullivan Law went into effect had Italian surnames.

More recently, the federal Gun Control Law of 1968 banned mail-order guns and cheap, military-surplus imports, largely because these firearms were thought to be favored by black rioters and militants. The connection was not lost on Eldridge Cleaver of the Black Panthers, who noted in 1968: "Some very interest-

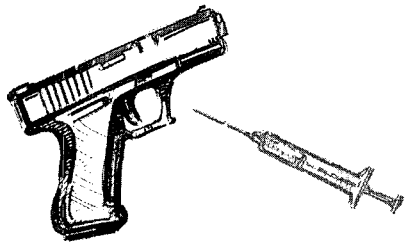
ing laws are being passed. They don't name me; they don't say, take the guns away from the niggers....They don't pass these rules and these regulations specifically for black people. They have to pass them in a way that will take in everybody."

Similarly, although American drug laws were framed in general terms, they were often written with certain groups in mind. In the late 19th century, Western laws dealing with opium were a way of harassing Chinese immigrants, who were resented because they competed with white laborers. In 1881, the California legislature outlawed opium dens, where San Francisco police claimed they had "found white women and Chinamen side by side under the effects of the drug—a humiliating sight to anyone with anything left of manhood."

As Richard Lawrence Miller reports in his book *The Case for Legalizing Drugs*, cocaine began to be associated with blacks in the public mind early in this century. In 1903, the American Pharmaceutical Association said of the cocaine habit: "The negroes, the lower and criminal classes, are naturally most readily influenced." In 1910 the House Ways and Means Committee heard that "the colored people seem to have a weakness for [cocaine]....They would just as leave rape a woman as anything else, and a great many of the southern rape cases have been traced to cocaine." Stories began to circulate about "cocainized negroes" with superhuman strength who were unfazed by police bullets—stories that resemble more-recent descriptions of criminals under the influence of PCP.

And just as competition from Chinese immigrants led to a crackdown on opium dens in California, cheap Mexican labor during the Great Depression fed agitation about marijuana in the Southwest. In fact, the drug was then known as "Mexican opium." In 1937, the year that Congress passed the federal ban on marijuana, a Colorado newspaper editor wrote to the Bureau of Narcotics: "I wish I could show you what a small marijuana cigaret can do to one of our degenerate Spanish-speaking residents. That's why our problem is so great; the greatest percentage of our population is composed of Spanish-speaking persons." Like opium and cocaine, marijuana was tied to the rape or seduction of white women.

As these examples suggest, gun laws and drug laws tend to be passed in an atmosphere of hysteria that discourages critical reflection. The Gun Control Act of 1968 was approved soon after the assassinations of Martin Luther King Jr. and Robert F. Kennedy. In fact, on the very day that Kennedy died, President Johnson issued an impassioned appeal to Congress demanding passage of a federal gun-control law. Two dramatic incidents had helped create a sense of crisis, which Johnson used to his advantage.



Supporters of gun control are always quick to seize upon sensational acts of violence to justify more regulation. The attempted assassination of President Reagan in 1981 ultimately gave us the Brady law, and the Stockton massacre generated "assault weapon" legislation throughout the country.

President Clinton tried to do something similar after last December's shootings on the Long Island Rail Road. (See "Tactical Tragedies," March.) Indeed, supporters of gun control are always quick to seize upon sensational acts of violence to justify more regulation. The attempted assassination of President Reagan in 1981 ultimately gave us the Brady law, and the Stockton massacre generated "assault weapon" legislation throughout the country. In his book, Kopel describes how dramatic, isolated events have led to major changes in the gun laws of Great Britain, New Zealand, and Australia as well.

A similar pattern can be observed in drug policy. Consider the impact of two high-profile deaths. In 1986 Len Bias, a promising young basketball star, died in his room at the University of Maryland. He had recently consumed large amounts of cocaine and alcohol. That same month, another young sports star, pro football player Don Rogers, died of a cocaine overdose. Coming at a time when the press was hyping the dangers of cocaine, especially in its smokable form, these two deaths helped push the war on drugs to a new level of ferocity.

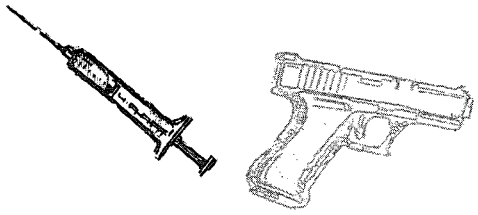
As Arnold Trebach recalls in *The Great American Drug War*, "bills were tossed into legislative hoppers all over the country as if they were sandbags heaved onto dikes hastily erected to control a rampaging flood. Measures were proposed on both ends of Pennsylvania Avenue in Washington to demand mass random urine tests of government officials, to deploy the military to control drug trafficking,...to water down the exclusionary rule...and dozens of other, more repressive recommendations."

Which brings us to the impact that gun control and drug control have on civil liberties. Since both policies aim to control things that individuals buy and sell voluntarily, both involve government intrusion into people's private lives. They charge the police with stopping transactions and preventing ownership, which requires surveillance and entrapment. The extent of the intrusion depends upon how extensive the legal restrictions are and how serious enforcement is.

The results are more dramatic in the area of drug control, where broad classes of substances have been banned altogether. The list of trespasses occasioned by drug prohibition is by now painfully familiar. The war on drugs has seriously eroded the Bill of Rights, especially its search-and-seizure, due process, and property-rights provisions, but also the right to counsel, the right to free speech, and the right to the free exercise of religion. The drug laws give the state license to invade our homes, to search our bodies, to monitor our conversations, to take our property, freedom, and lives.

The effect of gun control on civil liberties (aside from the right to keep and bear arms) is less obvious, because the restrictions are less severe. For an idea of what life would be like in the United States if the government got really serious about gun control, take a look at Japan, where private possession of firearms is very rare. Not coincidentally, the Japanese accept a level of police surveillance and intrusiveness, including searches at will, that would be intolerable to most Americans.

Most, but not all. In a recent *Los Angeles Times* op-ed piece, a writer named Karen Grigsby Bates called for "unannounced sweeps of California, a coordinated effort by local police and sheriff departments and the National Guard to rid the state of guns." She conceded that such an operation would prompt complaints and lawsuits. "It would require arbitrary search and seizure and would make life miserable for all of us," she wrote. "Traffic would be snarled (because checkpoints would be established throughout cities, much like those at border crossings)." Still, Bates said, it would be worth the trouble, because the gun dragnet "would save lives and improve the quality of life." While this article appeared the week of April Fools' Day, I don't think Bates was kidding. I think she was just following the idea of gun control to its logical conclusion.



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Even if no one ever takes Bates's advice, U.S. gun-control laws already raise broad civil-liberties concerns. Any jurisdiction that requires a license to own or a permit to carry guns thereby gives police authority to investigate violations, which generates searches and arrests. When categories of guns are banned—such as sawed-off shotguns, so-called assault weapons under state laws, or handguns in some cities—the police may try to disrupt trafficking in addition to arresting people who own the illegal firearms.

Such attempts to enforce gun laws can have deadly consequences. The disaster in Waco, where more than 80 people died, grew out of charges that the Branch Davidians had illegally converted semi-automatic weapons to fully automatic. The federal siege of the Weaver family in Idaho, which resulted in three deaths, started with a Bureau of Alcohol, Tobacco, and Firearms attempt to entrap Randy Weaver into selling a couple of sawed-off shotguns. (See "Ambush at Ruby Ridge," October 1993.)

In addition to undermining civil liberties, gun control and drug control undermine responsible behavior. Again, this phenomenon is more familiar in the area of drug control.

Prohibition tends to make drugs more concentrated, since traffickers try to minimize the bulk of their contraband and consumers try to get the most bang for their buck at artificially inflated prices. Although the active ingredients are the same, crack and heroin pose more potential problems than coca tea and opium, just as liquor is harder to handle than beer.

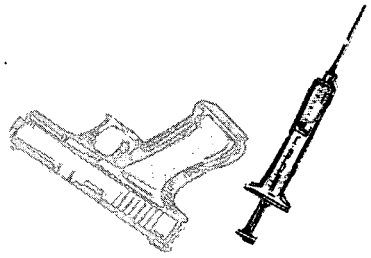
Furthermore, prohibition has a disproportionate impact on moderate, responsible users, who are more likely to be deterred by the trouble, expense, and risk of obtaining drugs in the black market. Even so, most people who consume illegal drugs do so moderately. But because they have to conceal their drug use, they can rarely serve as models for others. Instead, it is the most excessive, irresponsible users who are conspicuous and who come to represent the norm in the public mind. This situation is hardly conducive to establishing a culture of responsible use. Instead of neighborhood taverns and coffee houses, it produces shooting galleries and crack houses.

A friend of mine was raised in a household where her parents grew their own marijuana and smoked it openly. Today she uses pot occasionally, and her attitude toward the drug is much like the attitude toward alcohol of someone who grows up in a household of moderate drinkers. The main barrier to extending this sort of socialization is prohibition.

Like drug control, gun control mainly deters law-abiding people. Since the vast majority of criminals get their weapons through the gray or black markets, background checks, waiting periods, and licensing will never have a significant impact on crime. But such measures do impede people who want guns for self-protection or other legitimate reasons.

Gun control's effects on responsible behavior can be seen

most clearly in the jurisdictions with the strictest laws. As David Kopel notes, a New York City merchant who keeps an illegal pistol under the counter for self-protection is not likely to take it out for practice at a target range. Even if he managed to obtain a license, he could not legally teach his son how to handle the gun properly. In cities with strict gun control, the main models of gun ownership are criminals and the police. Parents rarely have the opportunity to teach their kids about firearm safety. Recent moves to outlaw gun possession by minors make it even harder to foster a culture of responsible gun ownership.



Arguing for drastic measures, prohibitionists offer anecdotes of people who lost their jobs, abused their children, stole, prostituted themselves, or died in accidents or overdoses because of their drug habits. To demonstrate the success of the drastic measures, they cite government statistics showing a decline in casual drug use.

Indeed, advocates of drug control and gun control deliberately blur the distinction between responsible and irresponsible use. Drug prohibitionists consider any use of an illegal substance to be abuse. When discussing "the drug problem," they commonly do a bait and switch. Arguing for drastic measures, they cite the horrible depredations of drug addiction, offering anecdotes of people who lost their jobs, abused their children, stole, prostituted themselves, or died in accidents or overdoses because of their drug habits. Trying to demonstrate the success of the drastic measures, they cite government statistics showing a decline in casual drug use.

In his 1989 national drug control strategy, William Bennett argued that casual drug users are worrisome and deserve punishment precisely because drugs haven't ruined their lives. By showing that illegal drug use need not lead to disaster, casual users encourage others to follow their example. To prevent such imitation, the government has to crack down on the casual users and thereby show that taking controlled substances has serious consequences. Former L.A. Police Chief Daryl Gates took this argument a step further, declaring that casual users should be taken out and shot as traitors in the war on drugs.

Similarly, the rhetoric of gun-control advocates implicates all gun owners in the crimes of a tiny minority. A recent pamphlet from the ACLU of Southern California asserts that the National Rifle Association "insists on a view of the Second Amendment that defies virtually all court decisions and contradicts findings of most legal scholars. In so doing, the NRA actively perpetuates a seemingly endless cycle of gun-related fatalities." Leaving aside the ACLU's questionable constitutional scholarship, the organization is arguing that Americans who defend their right to keep and bear arms are somehow to blame for violent crime. No matter how law-abiding, responsible, and peaceful you are, if you think you have a right to own a gun, you have blood on your hands.

Another propaganda trick shared by supporters of drug control and gun control is to justify restrictions in the name of children. Janet Cooke's fraudulent Pulitzer Prize–winning story about an 8-year-old heroin addict who never existed epitomizes the sort of pathetic child-in-danger story that is used to stir up anti-drug fervor. Drug warriors never tire of pointing to the young victims of drug abuse, whether children addicted to drugs or children abused by their addict parents. "Crack babies" are ideal for this purpose, since they combine both themes. And notice how California Gov. Pete Wilson responded to the surgeon general's tentative suggestion that legalization should be studied: "Dr. Elders is willing to relegate the youth of America to the perils of addiction and enslavement," he declared.

There's a certain ironic justice to that, actually, because Elders's comments about legalization came after a speech in which she insisted that stricter gun control is needed to save the young people of America. An ad that Handgun Control Inc. ran last year to promote the Brady Bill makes a similar point. The headline reads, in big block letters: "TOO MANY KIDS ARE GETTING A REAL BANG OUT OF LIFE. HELP SAVE THE NEXT GENERATION." Beneath the headline is a photo of Jim Brady in a wheelchair, flanked by quotes from children who are terrified by gun violence. Brady implores, "Do it for our kids."

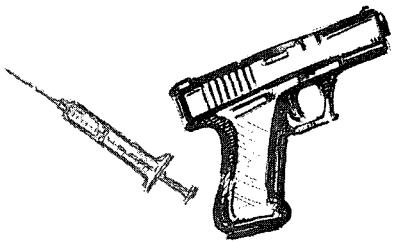
Focusing on kids is one way to create a sense of urgency. Another gimmick is to speak of guns and drugs as if they were viruses transmitting a deadly disease. The public-health model gives a veneer of science to what should be controversial assumptions about human nature and the proper role of government.

Although "medicalization" is sometimes presented as an alternative to the war on drugs, it plays an important role in rationalizing current policies. The medical model transforms a pattern of behavior—drug use—into a contagious disease that justifies confinement and coercive "treatment." And as we have seen, even the people who use illegal drugs without serious harm need to be treated, because they are "carriers," encouraging drug use by their example. To stem "the epidemic of drug use,"

drastic measures are necessary.

The medical model is also becoming increasingly popular among supporters of gun control. Medical journals publish articles that advocate stricter gun control on public-health grounds. These articles often present research findings that, upon close examination, have little to do with the conclusions drawn by the authors.

Dr. Arthur Kellermann has published two studies in *The New England Journal of Medicine* that are widely cited to support the claim that it's a bad idea to keep a gun in the home for self-protection. The first study, published in 1986, was the source of the factoid that a gun in the home is 43 times as likely to kill a resident as it is to kill an intruder. There are several problems with this study, but the most glaring one is that it failed to consider defensive gun uses short of actually killing someone—which, according to research by the criminologist Gary Kleck, represent something like 95 percent of defensive gun uses. Kellermann's other study, published in 1993, shared this crucial defect, in addition to other weaknesses, including a case-control approach that starts with homes where a homicide has occurred, rather than homes where a gun is present.



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More troubling than the specific problems with the design and interpretation of such studies is the very idea that gun control is a medical issue. I'll grant you that a physician is the person to see if you happen to have a gunshot wound. But M.D.s have no special qualifications when it comes to evaluating the merits of gun control. They are not criminologists or gun experts. They can claim to speak with authority in this area only by pretending that the misuse of guns is a disease.

In addition to having medical science on their side, supporters of gun control and drug control find that it helps to switch attention periodically to a new, supposedly unprecedented threat. By the time the claims about one threat have been punctured, there's another one to take its place. Among firearms, the bogeymen have included Saturday night specials, assault weapons, and plastic guns—none of which were what the gun-control lobby claimed they were.

Assault weapon is a neologism invented by gun-control advocates to play on the public's confusion of semi-automatic guns with machine guns. The definition of the term has never been clear, having more to do with scary appearances than a gun's actual capabilities. But most supporters of bans on "assault weapons" probably assume that these laws deal with guns that are especially dangerous and frequently used in crimes, neither of which is true.

The so-called plastic gun was a Glock 19 pistol, which is made with some plastic parts but includes over a pound of steel. It shows up on metal detectors and X-ray machines just like any other gun. Yet when the pistol was introduced in the United States, newspaper editorialists were outraged about what they described as an undetectable weapon, suitable only for terrorists.

Among drugs, the bogeymen have included just about every illegal substance at one time or another. Even people who laugh at the ridiculous stories that the government used to tell about marijuana, which supposedly drove people insane and made them commit horrible murders, are prepared to believe much the same thing about crack, PCP, LSD, and even khat, a mild stimulant popular in Africa and the Middle East that made headlines during the U.S. operation in Somalia. (See "Khat Calls," March 1993.)

The most revealing aspect of those horror stories is that the monsters are inanimate objects that somehow cause people to do terrible things. Hence we have the idea that the level of violence is directly proportional to the number of guns available, that there are many crimes that would not have occurred if a gun had not been lying around. Some supporters of gun control even argue that the very presence of a firearm elicits aggression.

And the history of drug prohibition is filled with warnings that reflect a fear of losing control, of being taken over by an outside force. If you smoke marijuana, you will chop up your family. If you take LSD, you will jump out a window. If you inject heroin, you will burglarize homes. If you smoke crack, you will have sex with animals.

Those fears are very powerful, especially when combined with a desire for easy solutions to the crime and violence that threaten everyone's security. Gun control and drug control promise to tame the ugly side of human nature, both within ourselves and within others. That they fail to do so is becoming increasingly hard to deny, but people have a need for demons. ®

Contributing Editor Jacob Sullum is articles editor at National Review. *This article is adapted from a speech he gave at the 1994 Reason Weekend.*

Life, Liberty, & the ACLU

Nadine Strossen, president of the American Civil Liberties Union, on rights in the age of P.C.

Interviewed by Cathy Young

Since its founding in 1920, the American Civil Liberties Union has arguably been both the highest-profile and the most controversial legal organization in the country. From its early involvement with such well-known defendants as John Scopes and the Scottsboro Boys to its more recent support of free-speech rights for Nazis and opposition to the death penalty, the ACLU has had a major impact on how constitutional rights and civil liberties are discussed and debated. Not surprisingly, the group is also a lightning rod for contrary opinions. While supporters applaud an organization committed to the preservation of civil liberties, critics decry a group increasingly dedicated to left-liberal politics.

The 1991 election of Nadine Strossen as president of the ACLU was widely interpreted as an attempt to return to the group's traditional emphasis on civil liberties such as freedom of speech and freedom of the press as opposed to its involvement with modish issues such as comparable worth and government aid to the homeless. Strossen is a graduate of Harvard Law School and a professor of constitutional law at New York University Law School. As a founding member of the National Coalition Against Censorship's Working Group on Women, she has been a leading supporter of free speech; her book *Defending Pornography: Free Speech and the Fight for Women's Rights* (Scribner), which will be published in October, articulates a feminist case against pro-censorship feminists.

"[The ACLU's] motto has not changed from 'Eternal vigilance is the price of liberty,'" says Strossen. While few libertarians would find fault with that Jeffersonian aphorism, it is clear that the ACLU's definition of liberty differs dramatically from that of most classical liberals. In the following interview with Contributing Editor Cathy Young, Strossen discusses those differences and articulates the logic behind them.

"The most unique and important function that we serve is to respond to blatant violations of rights. We have to be sure that the people are going to support basic principles so that demagogues cannot be elected running against the Bill of Rights and the Supreme Court when it supports the Bill of Rights. For that reason, I think public education has to be the organization's most important priority."

Reason: What are your priorities as president of the ACLU?

Nadine Strossen: My priority is to be a prominent, visible spokesperson for civil liberties. Recent events have revealed that civil liberties are never going to be secure unless there is public understanding and support for them. The Supreme Court issues decisions that are protective of rights that are not supported by at least substantial minorities of the population. Politicians run against the Court, and you get something like the Reagan and Bush presidencies stacking the Court and seriously endangering some of our most fundamental rights.

Take two examples where there actually was a great deal of success in eroding rights: reproductive freedom and separation of church and state. Despite the fact that overturning *Roe v. Wade* and school-prayer decisions were major agenda items for the Reagan and Bush administrations, they did not literally succeed in accomplishing those goals. But reproductive freedom has shrunk, in terms of the regulations the court has allowed states to impose. As a practical matter, that makes abortions very difficult to obtain for many women in this country.

And, although the court did not overturn its school-prayer decisions, it has weakened the standard it uses to review religious incursions into government and governmental involvement with religion. So we are now fighting off a wave of legislative efforts to get prayer into schools in various indirect ways, the likes of which I hadn't imagined I'd ever see again in my lifetime. By last count, we have eight states and the District of Columbia that have passed laws mandating everything from a moment of silence to a prayer.

The most unique and important function that we serve is to be around all over the country to respond to these blatant violations of rights. We have to be sure that the people are going to support basic principles so that demagogues cannot be elected running against the Bill of Rights and the Supreme Court when it supports the Bill of Rights. For that reason, I think public education has to be the organization's most important priority.

Reason: Are there areas in which exercising one fundamental right precludes exercising others? What do you make of the argument, for example, that hate-speech codes represent an attempt to balance guarantees of free speech with guarantees of equal protection?

Strossen: That is the same argument that's made by folks who seek to restrict what they define as "pornography"—that word is always in quotation marks. It's common to say that we have to choose between freedom of speech or equality, that if you really care about equality you can't possibly be devoted to the First Amendment. I absolutely reject that as a philosophical matter and as a practical matter in the hate-speech context. And in other contexts. I think it's insulting to women, racial minorities—to anybody—to say that we have to choose between freedom of speech and equal opportunity.

I think there may be particular situations at the margins where rights might come into conflict. There may be situations where there's a tension between free exercise of religion on the one hand and non-establishment of religion on the other hand. But in the vast, vast, *vast* majority of cases, I think those rights are mutually reinforcing. It's that understanding that has led the ACLU from its beginning to attempt to consistently defend all fundamental rights for all people precisely because they are indivisible. If the government is given the power to threaten one right for one person, it can and will use that power to erode other rights for other people.

Reason: So why doesn't the ACLU challenge gun-control laws on Second Amendment grounds?

Strossen: We reexamine our positions when people come forward with new arguments. On the gun issue, I instituted a re-

JOANNE SAVIO

examination a few years ago in response to a number of things, but the most important one was an article by Sanford Levinson at University of Texas Law School that summarized a wave of new historical scholarship. Levinson's argument was that in the 18th-century context, a well-regulated militia meant nothing other than people in the privacy of their homes.

So we looked into the historical scholarship there and ended up not being persuaded. The plain language of the Second Amendment in no way, shape, or form, can be construed, I think, as giving an absolute right to unregulated gun ownership. It says, "A well-*regulated* militia being necessary to the security of a free state, the right to bear arms shall not be infringed." Certainly, when you have the notion of "well-regulated" right in the constitutional language itself, it seems to defy any argument that regulation is inconsistent with the amendment.

Putting all that aside, I don't want to dwell on constitutional analysis, because our view has never been that civil liberties are necessarily coextensive with constitutional rights. Conversely, I guess the fact that something is mentioned in the Constitution doesn't necessarily mean that it is a fundamental civil liberty. So the question becomes, What is the civil-liberties argument of those who would say we should be opposing all gun control? What it comes down to is the very strong belief that having a gun in your home is something that can ultimately fend off the power of a tyrannical government. I find that really unpersuasive in the 20th-century context. Maybe it made sense in the 18th century. I would hope that's the kind of thing we do through words rather than through guns and that, to me, is the function that the First Amendment serves, not the Second Amendment.

"The civil-liberties argument of those who would say we should be opposing all gun control comes down to the very strong belief that having a gun in your home is something that can ultimately fend off the power of a tyrannical government. I find that really unpersuasive in the 20th-century context. Maybe it made sense in the 18th century."

Reason: Would you support a total ban on gun ownership?

Strossen: We might very well oppose that. I would think that our present policy would not foreclose opposing that the way we oppose many other kinds of prohibition, such as drug prohibition.

Reason: The issue of trading off rights also comes up in sexual-harassment laws. What's the official ACLU policy on sexual harassment?

Strossen: We have a policy that, along the lines of the Supreme Court's decision last fall, is pretty open-ended. You have to look at all the facts and circumstances in any particular case. We rejected the female employee's position [in *Harris v. Forklift Systems*] that sexual harassment should extend to anything she considered to be offensive at work. That clearly would allow for restriction of free speech and, unlike market liberals, we believe that employees in private workplaces do have fundamental rights that should be subject to restraint only if necessary to perform the job. We also rejected the employer's argument, which was that to show sexual harassment, you have to show some tangible psychological injury, which is more of a showing than is required in any other anti-discrimination context. We thought that went too far.

In between those two poles, we have to decide on a case-by-case basis. The most contentious case we've had so far, and I really like the way we came out, was the Jacksonville shipyards case. We wrote a brief opposing the court's order to the employer that all sexually suggestive images of women be banned from the workplace. We argued that—to the extent it's not a specifically sexual image that a woman finds offensive and that it's not deliberately thrust in her face repeatedly and directly targeted in a harassing fashion—male or female employees should be free to look at sexual images during their free time. It's a hard argument to make given the case law, which is that there are no free-speech rights in the private workplace. I think it unlikely that the court will accept our suggested remedies.

Reason: What about the conflict between privacy or property rights and speech rights? For example, are owners of private shopping malls obligated to allow people to distribute literature on their property?

Strossen: Our view is that there are certain fundamental individual rights which may not be intruded upon or violated. When our Constitution was written, the state was the only entity

JOANNE SAVIO

in society that had sufficient power to deprive individuals of fundamental rights. Now we have corporate concerns with far more power over people's lives than the state ever had in the 18th century. The market-liberal response is that if the individual doesn't like what their employer is doing—for example, saying that you cannot smoke at your home—then the individual goes off and gets another job. Our view is that's unrealistic.

And if people are not going to have fundamental freedoms at work, then they are not going to have them for all practical purposes, because that's where they're spending the vast majority of their time. Obviously, if you're talking about a mom-and-pop shop, or if you're talking about an owner-occupied housing unit, then you have to recognize that there are significant personal rights involved, personal rights that are bound up with property rights. So we are striking a balance that would not allow lack of regulation in what we see to be the service of the individual rights.

Reason: So your position is that owners of shopping malls have to permit the distribution of materials?

Strossen: Yes. They can disassociate themselves from the message so they don't seem to be endorsing it. They can have disclaimer signs. They can have counter-speech if they want. Individual stores do not have to serve as a forum. But the common area in the mall, which is the functional equivalent of a sidewalk outside the traditional store or a town square, should serve as a public forum. That's its function. Around the country, most of the human traffic and the opportunity for exchanging ideas is in shopping centers or sidewalks outside shopping centers.

This is one of those cases where rights come into tension with each other. There are some hard cases. At our last national board meeting, one of our board members brought up another example. He pointed out that there are more and more retirement-type villages that are essentially completely self-contained communities. These people never go outside and the only way to communicate with them is to get inside to the common areas, to the mailbox areas. Yet there are very strong prohibitions against that.

Now you're talking about somebody's private dwelling. It seems that the counter concern to free speech is much more significant. But what if you're talking about political speech and getting information distributed about candidates or information that people can't afford to mail? In each particular situation you have to make a careful evaluation.

Reason: What about cases where a landlord has moral objections to certain activities that tenants may engage in at the rental property?

Strossen: We would oppose regulation that would intrude on an owner-occupied dwelling; it's just being consistent with the right to privacy. Then you get harder questions when you say, Well, suppose it's large enough so that it's not really a private dwelling. Some lines are going to be seemingly arbitrary. From our position, if you're not saying absolutely no regulation, then we have to draw the line at some point.

There are constantly going to be some difficult issues if you have a fidelity to all rights and don't automatically exalt one above the other. We are constantly drawing balances, even within the First Amendment itself.

Reason: What is the ACLU's position on the idea of extending the Fairness Doctrine to all media, including print? Should people be ensured of venues in which to express their views?

Strossen: We have historically supported the Fairness Doctrine, although I've dissented from that position, as have other prominent people within the ACLU. Our basis for supporting it was so narrow and so historically contingent that I really have my doubts as to whether even the Fairness Doctrine itself would be reaffirmed if the ACLU National Board took another look at it. It was based on the notions of spectrum scarcity and of government having conveyed a public trust, if you will, to the broadcasters. Both facts have changed substantially. We have never taken that position with respect to any other media and certainly have never taken it with respect to print media.

In *Turner Broadcasting v. FCC* we have some of these issues. I think it's going to be one of the most important First Amendment decisions from the Supreme Court for many years. It will force the court to address the extent to which the cable industry should be dealt with more like the print media, which is not subjected to governmentally imposed access requirements, or the extent to which cable will be treated more like TV and radio, with their Fairness Doctrine–type constraints.

To the extent that you can show in particular communities that the cable company is given a government monopoly and nobody can come in there and compete, it is absolutely fair to impose common carriage-type requirements on them. [A "common carrier," such as a phone company, must provide service to all legitimate customers and cannot make editorial decisions about their speech.] I don't think they can use a government-bestowed monopoly to engage in content-based or viewpoint-based distinctions as to who can use their medium any more than a telephone company can. We also recognize that cable companies do serve as publishers themselves. They create programming, so we argue for a modified common-carriage approach. That's the same approach we take to the whole National Information Infrastructure. You have to be sure that it is an open highway for all comers to exercise their voices, so long as it is the only game in town. It cannot serve as a bottleneck preventing diverse speech. But beyond that, you have to let it exercise its own First Amendment rights.

Our hope is that the NII will shape up in such a way that a lot of these questions will become moot. There is a technological capability to have universal two-way interactive networks of communications so that the old shibboleth—"We have freedom of the press for everybody who can afford a printing press"—will no longer be true, because everybody will in some sense own a printing press. So our major emphasis in this area now is working in Congress for legislation in setting up this information superhighway. We want to be sure that the technological and economic decisions that are made at this point will create that kind of interactive universal network.

Reason: Hasn't the ACLU neglected property rights? Should there be a fundamental distinction between civil liberties, such as speech or religion, and property ownership?

Strossen: Well, there certainly isn't any distinction in my mind. And there certainly isn't any distinction in terms of ACLU

policy. People have rights. Property doesn't have rights. Some of the rights people have are closely associated with property. The Due Process Clause says government cannot deprive people of life, liberty, or property without due process of law. We certainly have many cases involving that privilege.

The Supreme Court really hasn't done too much in this area, so the examples that I can think of go back a long way. They were cases in the 1960s that involved government jobs or government benefits in which the courts analyzed the benefit as property. We have never taken the position, despite repeated requests from certain elements within the organization, that you should have a fundamental right to "property," that the government should guarantee an income or guarantee a house. However, we have always taken the position that, if the government chooses to distribute certain benefits, it may not do so in a way that violates fundamental rights, including depriving you of the property that the government has chosen to give you, without certain procedural protections.

Reason: Does the ACLU support enforcement of the Takings Clause?

Strossen: I don't think that we would have any problem supporting a meaningful interpretation of the Takings Clause. I think it's very dangerous to read certain language out of the Constitution. If the Court can do it from one portion of the Constitution, it can do it for other portions. Therefore, I'm very philosophically supportive of the efforts to put real meaning back into the Takings Clause and to overturn the *Slaughterhouse* cases which, of course, completely read the Privileges and Immunities Clause out of the Constitution. [In an 1873 decision, the Court narrowly interpreted this clause of the 14th Amendment and allowed the states broad regulatory powers.]

Reason: The ACLU has come down in favor of hate-crime laws and enhanced-penalty statutes. Where do you draw the line so that people are not penalized for their views or ideas?

Strossen: The ACLU policy is rather subtle and calls for an evaluation of each particular law and each particular application of each law. We rejected the position taken by people I know and respect that all such laws will in effect constitute thought crimes. As an organization that has long supported anti-discrimination laws, we thought that laws could be framed and enforced in such a way that they would simply be penalizing intentional discrimination in choosing a crime victim, much the way anti-discrimination laws take something which is not even illegal in the first place—refusing to hire, refusing to rent to somebody—and make it against the law if you have a certain intent. Our reasoning was, if you can do that with something that's not independently illegal, can't you take something that's already a crime and make it a more severe crime?

The potential for abuse is very great. Our policy is that we will not oppose such laws if there is a very tight causal nexus to the evidence of intentional discriminatory selection of a victim and that it is proved beyond a reasonable doubt. The one case where we concluded that the standard was satisfied was the U.S. Supreme Court case *Wisconsin v. Mitchell*, which was decided in 1993.

The Wisconsin law was very narrowly drafted as these things go. Unlike other laws we have opposed, it did talk about intentional selection of the victim on the basis of discrimination. The particular evidence in the Wisconsin case involved a statement that the defendant made literally in the process of inciting a crime. I think that speech would have been independently punishable as intentional incitement.

What's distressing is that the Court's opinion, which was unanimous, didn't go into any of the potential dangers to free speech. It didn't emphasize the particularly tight nexus in that case between speech and the crime, or the narrow wording of the Wisconsin statute. I think it really opens the door to all kinds of abuses. I strongly suspect that we will be in a position of opposing most applications of most such laws.

Reason: The ACLU has opposed school vouchers on church-state grounds. How did you arrive at that position?

Strossen: We have a policy of opposing vouchers that goes back many, many years. The old policy deals with the issue of whether vouchers can be used to finance parochial schools. Vouchers were initially opposed because it was our perception that they were proposed as a ruse to get around Supreme Court decisions prohibiting direct governmental funding of parochial schools. The [voucher plan voted down in California last year], for instance, was structured in such a way that religious schools were clearly exclusive beneficiaries in the sense that the amount of money was set at such a level that the only tuition that it could possibly pay for was parochial school. That violates fundamental First Amendment principles.

Reason: What is the distinction between taking a Pell grant and going to a Catholic university and taking a voucher and going to a parochial school?

Strossen: The Pell grant is clearly constitutional because it's the government giving money directly to individuals in a nondiscriminatory way in terms of how they are going to use it and the ideology or belief that they reflect in their individual choices. I think the Supreme Court would look at the mechanics of who gets the money and, in a lot of voucher programs, the money goes directly to the schools, not to the parents. Some of them present a problem even at the superficial level.

You have to ask, just as you always do in separation-of-church-and-state cases, what is the purpose of the program, and what is the effect of the program? If you can show that the purpose is not to neutrally help all individuals pursue education and you can predict that it will have the effect of singling out parochial schools and helping them, that's very different from the intent and the fact of helping individuals. These are not bright-line distinctions. You have to evaluate all the facts and circumstances whenever you get into separation of church and state.

The California plan also had some other problems, as I recall. The vouchers could be used for schools that were engaging in racial and gender discrimination [actually, the California initiative explicitly excluded schools practicing racial discrimination], and the ACLU also has a problem with that. I wrote the brief for our Bob Jones University case, in which we argued that the government could not subsidize racially discriminatory schools, even indirectly through the tax system. The way the California program was set up, it could do that, for gender discriminatory ones,

too. But you can say, well, to some extent, there are always some government subsidies, right? They all get fire protection.

Reason: Don't people use federal money to go to all-female colleges?

Strossen: Exactly. Again, one has to look at the degree of involvement, the degree of subsidization.

Reason: If someone devised a school-voucher plan that was reasonably neutral, in which the money went to individuals and there was no overwhelming bias to parochial schools, do you think the ACLU would support such a plan?

Strossen: I can't imagine an affirmative civil liberties basis for supporting it. The question would be, Are there continuing civil-liberty objections to it? If we got to a situation that was not as egregious as what we saw in California recently, we would have to take a hard look at it. But my own view is that we would not per se exclude programs that included parochial schools any more than we per se oppose Pell grants.

Reason: You mentioned earlier the idea of an employer banning his employees from smoking. Are you concerned by the movement toward a prohibition on smoking?

Strossen: Absolutely. The form that those regulations often take is employers prohibiting their employees from smoking not only in the workplace but even at home. Our view is that what you do in your own time and in your own space, if it's not directly undermining your efficiency as a worker, it's your business, not your employer's.

We certainly wouldn't object to passing on in a fair way extra costs that are incurred as a result of personal choices, but that's a very different thing from absolutely prohibiting it and denying a person that choice. We have been lobbying for laws and we've been successful. More than half the states now have laws that prohibit employers from regulating what employees do in their own time. Some of the laws are targeted specifically at smoking. Others are written more broadly and basically say, as long as it's their own place and their own time, they can do what they want.

Reason: Do you think that regulations of smoking in public are similarly troubling?

Strossen: If you gave me a specific example, I could answer that. Our policy on regulation of smoking calls for a fact-specific analysis that reasonable regulations are designed to protect somebody from second-hand smoke. I think [an outright ban] could conceivably raise a civil-liberties problem. It's a bit of a stretch. You would have to say, well, a restaurant is a public accommodation, which means that they have to be open to all comers, which they still are. They are just saying that, while you're there, you can't engage in this particular behavior which does have demonstrably adverse consequences. It seems to me that if you're going to make the argument that it was violating some fundamental right of the smoker, you have to in some way play up the fact that smoking is an addiction, that you're discriminating against this disabled person.

I do see [smoking prohibition] as kind of hysterical and a misguided response from a public-health point of view. I think it is a policy that would increase smoking, particularly among the young where we want their education to discourage them from undertaking health risks. It's ironic, because smoking is such a great example of where consumption has gone down dramatically through education because of the absence of prohibition.

Reason: How does the ACLU pick specific cases in which to become involved?

Strossen: I think one of the criteria for our work is that by definition it has to be reactive. The government is doing something; we're reacting against it. We also have to have the tools to do something constructive. If something is clearly a loser, then we're not going to take the case. We're not going to waste the resources. The irony is that most of our cases are completely uncontroversial within the ranks of civil libertarians. They're attempts to enforce rights that even the Supreme Court would say are clear rights. But it's one thing for the Supreme Court to say it, and it's another thing for the local police chief to recognize it, the local school board to know about it, the local town council to honor it. ®

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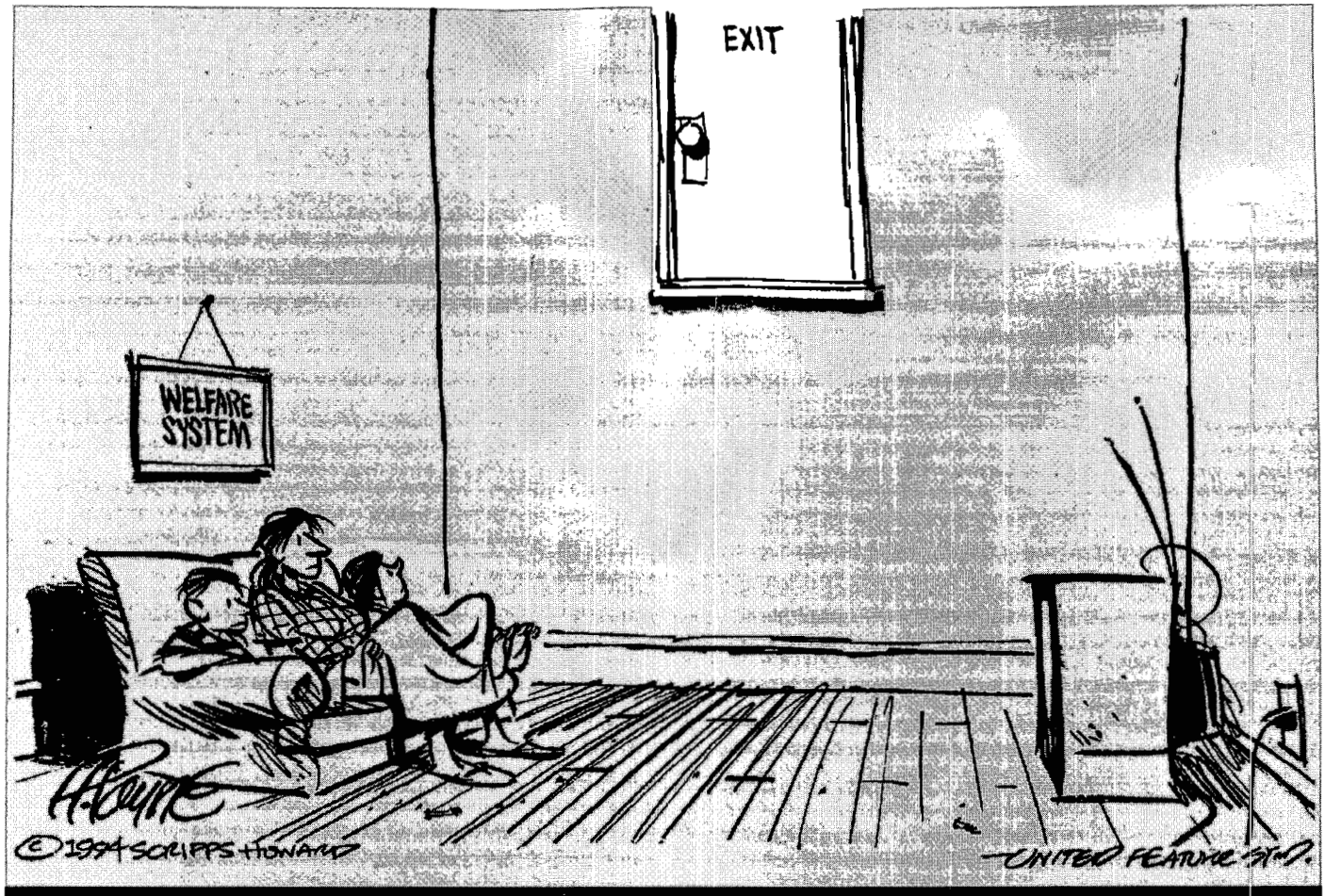


The New Anti-Welfare States

While states experiment with real change, Clinton threatens to end welfare reform as we know it.

By John Hood

If you want to see what a real "two years and out" welfare-reform plan might look like, look to Madison, not Washington.

Madison, Wisconsin, not Washington, D.C., that is. That conclusion only became unmistakably clear once President Clinton finally unveiled his long-awaited, much-anticipated welfare-reform plan in June. The Clinton plan promises that, by the end of the century, about 7 percent of families receiving federal cash assistance will have to leave the rolls after two years unless they participate in some form of jobs program.

In the state of Wisconsin, Republican Gov. Tommy Thompson's reform agenda is moving along at a less-glacial pace: A pilot program approved for his state last year will put welfare families to work after 30 days, and cut off cash assistance to families in two years whether they are working or not. Other non-cash assistance such as medical coverage will end after another year. Thompson's plan,

HENRY PAYNE

in other words, actually makes good on candidate Clinton's pledge to "end welfare as we know it."

Not coincidentally, the Wisconsin plan puts into action the "new consensus" among welfare-policy analysts: Long-time assistance destroys initiative and family formation; regular work is essential to building the skills and self-respect needed to make the leap to self-sufficiency; education and training are far less important than actual work experience; and spending lots of money to "reform" welfare is counterproductive.

Unfortunately for serious welfare reformers in Wisconsin, Massachusetts, Oregon, and other states, the Clinton plan promises to be the end of welfare *reform* as they know it. Not only does Clinton fail to deliver the goods, but he will keep the reformers from doing so as well. Analysts say a federal bill introduced by or acceptable to the administration will trump plans that call for stronger work requirements. Combined with heavy-handed federal oversight of state experimentation and recent anti-reform court decisions, Clinton-style welfare reform will be a public-policy catastrophe.

Unfortunately for serious welfare reformers in Wisconsin, Massachusetts, Oregon, and other states, the Clinton plan promises to be the end of welfare reform as they know it. Not only does Clinton fail to deliver the goods, but he will keep the reformers from doing so as well. Analysts say a federal bill introduced by the administration will trump plans that call for stronger work requirements. Combined with heavy-handed federal oversight of state experimentation and recent anti-reform court decisions, Clinton-style welfare reform will be a public-policy catastrophe.

That's probably not what many Clinton voters expected after their candidate's campaign promises during 1992. His calls for welfare reform, which New York Sen. Daniel Patrick Moynihan (D) has dismissed as "boob bait for the Bubbas," helped Clinton separate himself from his party's traditional political establishment and contributed mightily to his reputation as a "New Democrat."

His plan, though, was kept deliberately vague. After the election, an internal war in the administration—between paleoliberals aghast at the prospect of cutting off benefits to anyone and political advisers arguing for some sort of bill they could sell to voters as tough welfare reform—took 17 months and some 200 grueling meetings to resolve. It wasn't until June that the details of the bill finally made the papers.

But while the administration was conducting an extended excursion into welfare wonkery, individual states were hammering out and attempting to implement actual reforms. In Wisconsin, Thompson has been assailing the welfare state for years. Since his election on a welfare-reform platform in 1987, the state has reduced its Aid to Families with Dependent Children caseload by almost a fifth, while all but two other states have seen their caseloads rise. But even in Wisconsin, welfare remains in need of a complete overhaul, not just a tune-up. It guzzles hundreds of millions of dollars in state and federal money. And the existing programs do little to help thousands of residents get off of welfare and become self-sufficient members of society. So last year Thompson announced his latest broadside, called Work Not Welfare, which, under a waiver granted by the federal government, initially affects two Wisconsin counties.

Perhaps the best way to get a handle on how Clinton's and Thompson's plans differ is to compare their effect on an average welfare family—a mother with two kids receiving AFDC, food stamps, Medicaid, and a smattering of other programs.

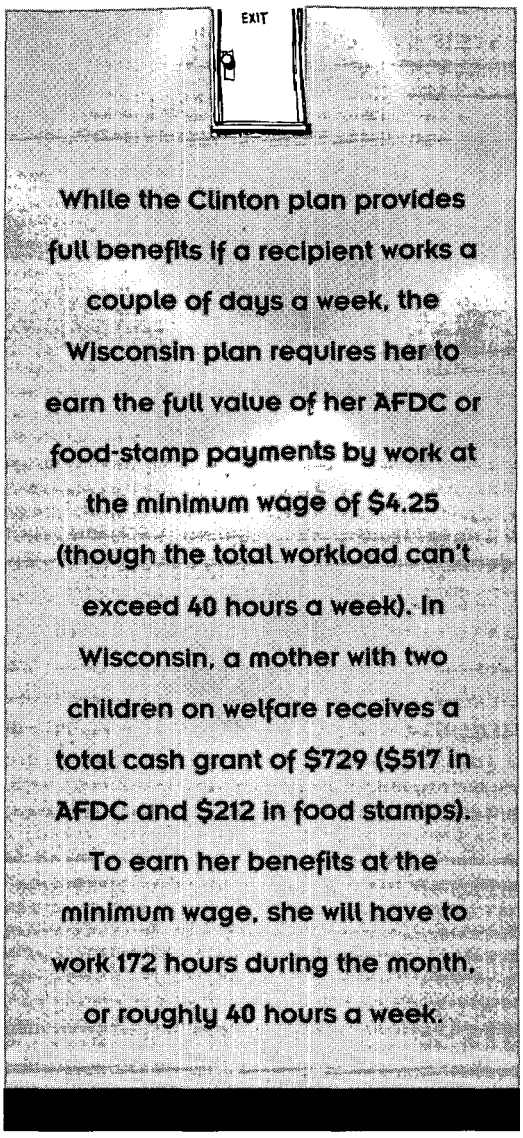
Under the Clinton plan, the 80 percent of current welfare mothers born before 1972 can breathe easy—they're not affected. Younger mothers will have a two-year grace period, during which they can participate in education and training programs to prepare them for the job world. After two years, those who haven't already found a private-sector job would have to enroll in a work program run by state and local agencies. A mother might be placed in a community-service program—picking up trash at a public park, stuffing envelopes at the public library—or in a government-subsidized job with a private company. Wherever she is placed, the mother would be required to work only 15 hours per week.

Robert Rector, a welfare-policy analyst at the Heritage Foundation, points out that for a welfare recipient working 15 hours, the average state's total cash, food, and medical benefits will work out to about $15 an hour, several times the minimum wage she would presumably garner in the market. By the year 2000, the Clinton administration predicts that some 400,000 welfare households, out of 5.7 million AFDC households, would be participating in work programs created by the president's plan.

Under Thompson's Work Not Welfare plan, a typical welfare family's situation would be radically different. Unlike the Clinton plan's emphasis on job *training*, its focus is on *jobs*—immediately giving welfare recipients the sort of work experience that would make it possible for them to enter (or reenter) the economy with marketable skills. In the affected counties, all AFDC recipients, regardless of age, will be subject to work requirements by July 1, 1995. The plan cashes out the food stamp program in the two target counties and adds the money to AFDC to create a so-called Independence Account for each recipient. This account consists of 24 months of (not necessarily consecutive) cash

assistance provided in exchange for work, plus an additional 12 months of Medicaid and child-care benefits.

While the Clinton plan provides full benefits if a recipient works a couple of days a week, the Wisconsin plan requires her to earn the full value of her AFDC or food stamp payments by work at the minimum wage of $4.25 (though the total workload can't exceed 40 hours a week). In Wisconsin, a mother with two children on welfare receives a total cash grant of $729 ($517 in AFDC and $212 in food stamps). To earn her benefits at the minimum wage, the mother will have to work 172 hours during the month, or roughly 40 hours a week. If she works only 30 hours, her monthly cash assistance will be cut by a fourth. To further motivate recipients, the account must be drawn down within a four-year period. After either drawing down the account or reaching the four-year limit, that's it. No more assistance. And if you don't participate in Work Not Welfare, you immediately lose AFDC. While the enforcement measures may appear draconian, they are designed not to punish people but to spur them into self-sufficiency.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Wisconsin isn't the only state poised to try serious welfare reform. In Massachusetts, Gov. William Weld's welfare-reform proposal similarly imposes a work requirement: All able-bodied AFDC recipients would have to work to continue receiving assistance. Work would help break the cycle of dependency by changing "the daily physical routine of the recipients," said Weld at a recent American Enterprise Institute seminar. "Many AFDC mothers do not get out of the house. As a result of their isolation, they develop major self-esteem problems, and it grows harder and harder for them to become contributing members of society." Weld's program excludes teen parents, parents with infants, and disabled recipients, so the state expects only about 50 percent of AFDC families to participate. To smooth the transition to the wage economy, the plan converts $800 million in cash-assistance programs (primarily AFDC) into day-care subsidies for parents working in private or community-service jobs.

On the West Coast, Oregon has set the pace in welfare reform. In 1990, voters passed a ballot initiative that would have required AFDC, food stamp, and low-income unemployment insurance recipients to earn their benefits by working at 90 percent of the state's minimum wage. Implementing that initiative, however, would have required extensive waivers from the federal government that were either unlikely, in the case of food stamps, or, in the case of unemployment insurance, simply impossible, says Jim Neely, assistant administrator of adult and family services in Oregon's Human Resources Department.

In place of the initiative's reforms, Oregon is experimenting with a less-radical program called JOBS Plus, passed last year. Like the Wisconsin and Massachusetts plans, it places work at the center of reform. JOBS Plus establishes a six-month period of employment in either a private or community-service program in six target counties, but participation is optional. The state will collapse AFDC, food stamp, and unemployment insurance payments for recipients into payment for work at no less than the minimum wage ($4.75 in Oregon). The state expects to pay for the extra costs of the program (child-care and transportation expenses) with $2.7 million in start-up money from a state lottery and future savings from getting people employed and off public assistance. That could be tough, Neely says, because no one is sure "where the jobs [for welfare recipients] will come from and what it will cost. We think JOBS Plus can be a method for answering that question."

The current wave of state reforms reflects a new appreciation of the shortcomings and unintended consequences of conventional welfare policy. The new consensus that short-term assistance and work experience are the real keys to getting and staying off the dole is rooted in important scholarship published during the 1980s.

The 1984 publication of Charles Murray's *Losing Ground* directly challenged the efficacy of anti-poverty programs. The reaction from traditional welfare scholars and politicians alike was generally scathing, but at the same time Murray's straightforward rebuttal of the War on Poverty shifted the welfare debate substantially. Analysts could attack the system while eschewing Murray's more controversial assertions and policy prescriptions. "Until the mid-1980s welfare reform meant more benefits," explains Ron Haskins, a Republican staff member on the Ways and Means Committee of the U.S. House. "After Murray, reform also meant reducing dependency."

About the same time *Losing Ground* came out, researchers Mary Jo Bane and David Ellwood of Harvard University published several influential studies about the composition of the welfare population. They found that while most families leave welfare within two years, at any given moment more than 65

percent of the families on welfare are in the midst of spells lasting eight years or more. The implications from Bane's and Ellwood's studies, and from research along similar lines by Baruch College economist June O'Neill, are that lots of families move back and forth between welfare and work and that the number of families in long-term dependency builds up in the welfare caseload over time.

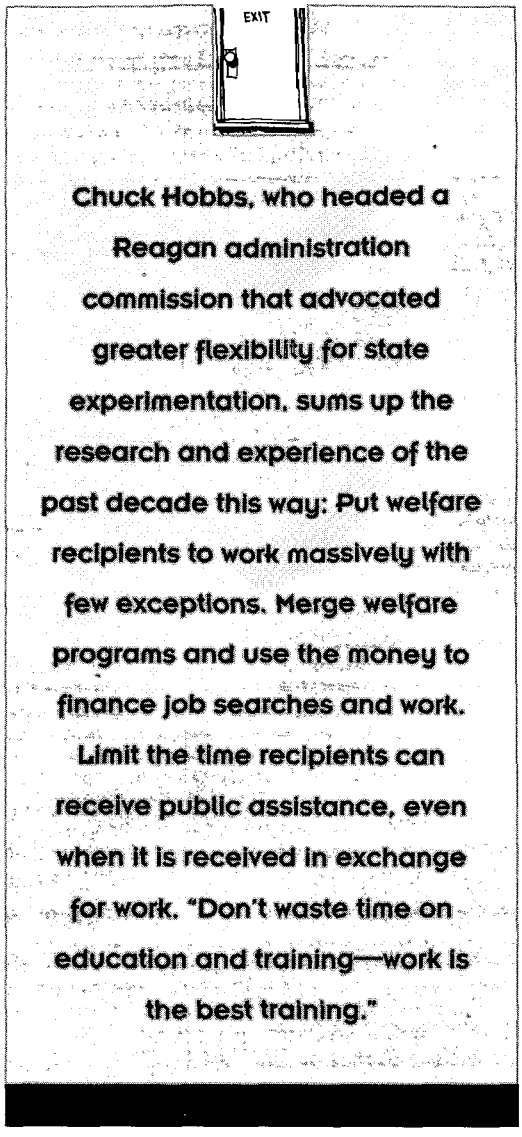
O'Neill has gone on to quantify the relationships among welfare, work, and marriage that Murray had originally postulated. She points out that welfare caseloads rose rapidly during the 1960s and early 1970s but then leveled off and even fell as a percentage of the population during that horrible decade, the 1980s. Only recently, since 1989, have caseloads again been going up in most states.

Interestingly, there is a close correspondence between growth in caseloads and growth in total welfare benefits (including food stamps, Medicaid, and other programs). O'Neill speculates that the current increase in caseloads is probably the result both of the recent recession and of the 1988 Family Support Act, which increased the value of welfare benefits.

And she notes that when the new Reagan administration and Congress decided to reform the old Work Incentives program (WIN) in 1981, lowering the amount a person could earn and still remain on AFDC, caseloads fell in many states. The 1981 reform "may be the only federal legislation ever to have been enacted which resulted in a decline in welfare participation," O'Neill observes.

A General Accounting Office analysis of the 1981 legislation found another interesting result: By limiting eligibility for AFDC, it also reduced Medicaid coverage for many low-income workers. But the GAO found that these workers did not have higher rates of unemployment than similar recipients did before the change, calling into question the popular assumption that for welfare reform to succeed you must guarantee Medicaid coverage during the transition from dependency to a job with health insurance.

In a 1993 study funded by the U.S. Department of Health and Human Services, O'Neill and M. Anne Hill discovered that a 50 percent increase in monthly AFDC and food stamp benefits led to a 75 percent increase both in the number of women enrolling in AFDC and in the length of time spent in the program. More important, they found that higher AFDC benefits in a given community suppressed employment of young adult men by reducing the probability of marriage (and the responsibility it creates for providing for a family) and by providing a source of income through girlfriends receiving benefits. The study also found that children raised in families that receive welfare assistance are themselves three times more likely than other children to go on welfare once they become adults, and that a 50 percent increase in benefits led to a 43 percent increase in the number of out-of-wedlock births.


EXIT
Chuck Hobbs, who headed a Reagan administration commission that advocated greater flexibility for state experimentation, sums up the research and experience of the past decade this way: Put welfare recipients to work massively with few exceptions. Merge welfare programs and use the money to finance job searches and work. Limit the time recipients can receive public assistance, even when it is received in exchange for work. "Don't waste time on education and training—work is the best training."

Yet another body of research inspires current reform plans, and it comes from the experience of previous state efforts. When Congress reformed WIN in 1981, it also gave states more flexibility in designing and implementing job-training-and-placement programs. Of the 30 states that responded with demonstration programs, eight contracted with Manpower Demonstration Research Corporation to help design and evaluate their programs. These programs were set up to be true research tests, with random assignment of participants into experimental and control groups, so the results are fairly solid. MDRC found that the states that combined job search and work programs could boost incomes or employment rates somewhat and slightly shorten welfare spells. Programs with extensive amounts of education and job training didn't pan out. Generally speaking, the cost of the successful programs was small ($800 per participant) and was offset by their benefits, albeit modest.

Chuck Hobbs, who headed an important Reagan administration commission that advocated greater flexibility for state experimentation, sums up the research and experience of the past decade or so this way: Put welfare recipients to work massively with few exceptions. Merge the 76 or so welfare programs (costing local, state, and federal taxpayers around $300 billion annually, according to the Heritage Foundation) and use the money to finance job searches and work. Limit the time recipients can receive public assistance, even when it is received in exchange for work. And, stresses Hobbs, "Don't waste time on education and training—work is the best training." Hobbs maintains that work builds self-reliance, which in turns builds self-respect and reduces the need for ongoing social programs.

Given the quality and quantity of the supporting research, work-driven welfare reform is eminently plausible. But it remains to be tested wholesale in the real world—and it may never

be. The Heritage Foundation's Rector has carefully read the text of Clinton's own welfare bill and points out two provisions that would trump existing and proposed state reforms alike.

First, the bill appears to limit the conditions on which a state can impose work requirements to that specified in the bill itself—in other words, says Rector, Clinton's real message is that, "If you don't meet these conditions, you don't have to work." Second, the bill stipulates that anyone made to work as a condition for receiving benefits must be paid the prevailing wage for the job they take. This provision could well serve as a sort of "quasi-Davis-Bacon Act," Rector says, protecting unionized workers and pricing low-skill welfare recipients out of the market for available work. In short, the bill, which he calls "tough on the outside, gooey on the inside," will set the welfare-reform debate back about 15 years.

In fact, states seeking to try out radical welfare experiments already face significant barriers. The Oregon JOBS Plus proposal, for example, illustrates the need for more flexibility in federal welfare oversight. The plan's relatively cautious design—eschewing tough work mandates—is a response to federal intransigence about the state's original, voter-approved initiative.

Court challenges led by Legal Services lawyers already pose a significant risk to the welfare-reform movement. The U.S. Supreme Court in January rejected an appeal by state officials in California and Minnesota of a federal ruling preventing states from limiting welfare benefits to new residents. Then in July, a federal appeals court in Sacramento struck down millions of dollars in California welfare cuts implemented under a 1992 waiver from the Bush administration.

"The current waiver process is difficult at best and not very satisfactory for anyone," Oregon's Neely says. "It is intended to test new ideas on a very small scale for use as information by the Congress to draft national policy. It doesn't work for states seeking to change their policies on their own."

Jack Svahn, the chairman of MAXIMUS Inc., which has contracts in 20 states to run job-placement and child-support-collection programs, has viewed the process from both the state and federal sides. He agrees that states lack the flexibility they need to change their welfare policies. "What happens in New York City is not necessarily going to work in Wyoming," says Svahn, a former state welfare director in California and high-ranking official in the Reagan administration. "The more power you can devolve, the better off you will be." But the Clinton welfare bureaucracy (which includes researchers Ellwood, who helped design the president's welfare plan, and Bane, the deputy HHS secretary in charge of granting waivers) has been seeking ways to squelch state reforms that go "too far," Svahn alleges.

Congress has been getting into the act, too. Both Massachusetts senators, Ted Kennedy (D) and John Kerry (D), oppose Weld's tough workfare plan and want the administration to deny it waiver approval. Sen. Patrick Leahy (D-Vt.), chairman of the Agriculture Committee, tried in July to strip the U.S. Department of Agriculture's authority to grant waivers to states that want to convert food stamps to cash for use in welfare reforms. "Providing cash undermines the character of food stamps as a nutrition program," Leahy said. It also undermines their more-fundamental character as an agriculture subsidy, a fact that surely did not escape the farm-state senator's notice.

The Senate, in spite of Leahy, voted to continue the waiver policy. But a statutory problem remains: the USDA will not let states make food stamps conditional on work. Wisconsin's Work Not Welfare originally proposed that both AFDC and food stamps be cut off to welfare recipients who refuse to work, but the USDA killed the idea.

Over at HHS, a policy change announced in May would require all states to follow an intrusive, time-consuming process for allowing public comment on waiver requests before they are sent to Washington. In defending this policy, Bane suggested that state welfare-reform experiments need to be examined on the basis of, among other things, that "protected groups"—minorities—"are not adversely affected." The National Governors Association notes that such a policy is clearly designed to give public-employee unions, civil rights organizations, and others opposed to serious welfare reform a "vehicle for national appeal of a waiver application," with which they can bog down a reform proposal for months or even years. Even reform opponents without big pockets can gum up the works, thanks to a Senate vote in late July to allow Legal Services Corporation representation for poor clients seeking to overturn welfare reforms that reduce their benefits.

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Who Are the Real "Welfare Magnets"?

For years, one of the most controversial issues in the welfare-reform debate has been the role of states in setting benefit levels for recipients. Self-styled "advocates for the poor" claim that allowing states to vary the size of welfare benefits is inequitable and discriminatory. Advocates point to the fact that, depending on where a poor person lives, benefits can differ dramatically. Fiscal conservatives often complain about "welfare magnets," states that attract migrants who come for the dole.

In every case, however, those arguments use nominal-benefit figures that do not account for the obvious cost-of-living differences between, for example, Boston, Massachussetts, and Biloxi, Mississippi. In nominal terms, the gap in benefits (including AFDC, food stamps, and Medicaid) is indeed great between Massachusetts, the most generous of the 48 contiguous states and the District of Columbia, and Mississippi, the least generous—$15,872 vs. $7,621 in 1991. But when cost-of-living adjustments are factored in to the comparison, the gap between the two benefit levels shrinks from $8,251 to $4,731. And when you compare benefits to the median family income in each state, you find that 42 states fall within the relatively narrow band of 25 percent to 35 percent.

Several states change rankings dramatically after adjusting for the cost of living. Some states traditionally thought of as welfare magnets turn out to be slightly below the middle of the pack—California plummets from 6th to 37th, the District of Columbia drops from 7th to 39th, and New Jersey slides from 9th to 38th. On the other hand, states in the Great Plains lacking the reputation of welfare generosity end up near the top of the list—Utah (2nd), North Dakota (4th), Oklahoma (6th), South Dakota (8th), and Iowa (9th). Even after the adjustment, state and regional differences persist in average-benefit levels, but their magnitude has been consistently exaggerated.

—J.H.

How the States Stack Up

State	Nominal Benefit	Rank	Adjusted Benefit	Adjusted Rank	Share of Income
Alabama	8,449	49	9,599	49	26%
Alaska	21,169	1	16,467	1	45%
Arizona	8,052	50	9,178	50	22%
Arkansas	8,584	48	9,875	47	30%
California	13,520	6	11,590	37	33%
Colorado	11,381	31	11,612	35	29%
Connecticut	15,422	4	12,802	12	30%
D.C.	13,269	7	11,019	39	34%
Delaware	11,613	27	10,979	40	28%
Florida	10,804	38	11,613	34	29%
Georgia	11,162	34	12,296	21	29%
Hawaii	16,554	2	12,402	19	39%
Idaho	11,298	30	12,827	11	36%
Illinois	10,345	41	10,287	45	25%
Indiana	11,757	24	12,572	16	31%
Iowa	12,061	17	12,912	9	35%
Kansas	11,655	25	12,475	17	33%
Kentucky	9,539	44	10,621	41	30%
Louisiana	10,540	40	11,810	32	32%
Maine	12,046	19	12,143	26	34%
Maryland	12,435	12	11,960	30	25%
Massachusetts	15,872	3	13,716	3	33%
Michigan	11,400	30	11,878	31	28%
Minnesota	11,879	23	12,128	27	29%
Mississippi	7,621	51	8,985	51	26%
Missouri	9,818	43	10,417	44	26%
Montana	10,982	36	12,212	24	34%
Nebraska	10,946	37	11,753	33	32%
Nevada	11,361	32	11,984	29	29%
New Hampshire	12,386	13	12,201	25	27%
New Jersey	13,146	9	11,112	38	25%
New Mexico	10,684	39	12,124	28	36%
New York	14,624	5	13,375	5	35%
North Carolina	11,630	26	12,229	23	33%
North Dakota	12,233	14	13,644	4	39%
Ohio	12,107	16	12,766	14	32%
Oklahoma	12,046	20	13,216	6	38%
Oregon	11,960	21	12,790	13	33%
Pennsylvania	12,059	18	12,281	22	32%
Rhode Island	13,241	8	12,636	15	32%
South Carolina	10,216	42	11,604	36	29%
South Dakota	11,607	28	13,171	8	38%
Tennessee	9,064	46	10,071	46	27%
Texas	8,847	47	9,600	48	25%
Utah	12,193	15	14,102	2	35%
Vermont	13,082	10	13,172	7	36%
Virginia	11,118	35	10,443	42	26%
Washington	12,568	11	12,882	10	32%
West Virginia	9,383	45	10,431	43	32%
Wisconsin	11,887	22	12,436	18	31%
Wyoming	11,553	29	12,389	20	34%

Note: Arizona's benefit levels appear artificially low because the state keeps Medicaid recipients in managed care.
Sources: U.S. House Ways and Means Committee "Green Book," 1992 and 1993; Walter W. McMahon, University of Illinois (cost-of-living indices)

"increased risk of homelessness, inadequate nutrition, and variety of emotional and physical problems" the cuts could create among the state's poor. Observers on both sides of the issue expect the California ruling to affect experiments in other states that reduce benefit levels.

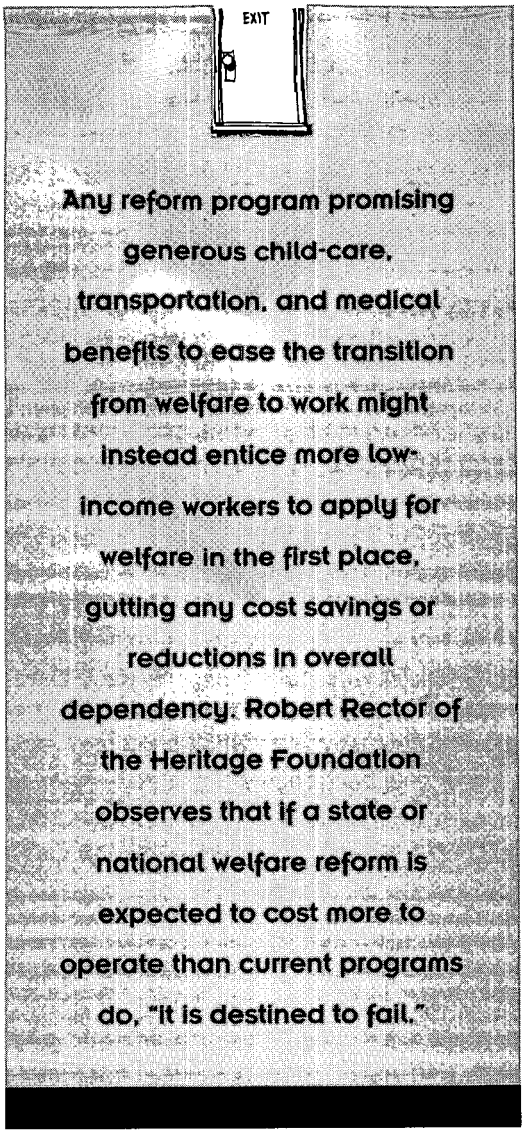
Even if the feds weren't prepared to limit state welfare experimentation, success would still be far from guaranteed. A big question is how to line up private-sector jobs for welfare recipients who, lacking them, will end up working for the government or a government-approved non-profit. Weld argues that since immigrants, many uneducated and unable to speak English, seem to find work in most job markets, welfare recipients should be able to as well.

But states with work requirements are having problems lining up jobs, often because employers aren't willing to hire welfare recipients due to concerns about their skills, commitment, and honesty. And, even though states are making more use of private job-placement contractors whose profits are tied to performance-based incentives, they're slower to reduce state and local taxes, remove excessive regulations—including restrictions on firing people—and streamline other government impediments to job creation for low-skilled workers. High federal payroll taxes and the national minimum wage also make it unattractive for employers to retain workers once their welfare subsidies end.

Without available jobs, work-based welfare reform will short-circuit. As a Pensacola, Florida welfare administrator remarked to *The Wall Street Journal* about that state's newly imposed work requirement for some recipients: "If we can't find them a job at the end of two years, we haven't held up our end. Then the contract is broken"—and the recipient goes back on welfare.

Another concern is that any reform program promising generous child-care, transportation, and medical benefits to ease the transition from welfare to work might instead entice more low-income workers to apply for welfare in the first place, gutting any cost savings or reductions in overall dependency. Heritage's Rector observes that if a state or national welfare reform is expected to cost more to operate than current programs do, "it is destined to fail."

That's one reason why an alternative to the Clinton plan, designed with help from Rector and introduced by Sen. Lauch Faircloth (R-N.C.) and Rep. James Talent (R-Mo.), would be a sound first step toward serious welfare reform. The plan would require 50 percent of adult welfare recipients to be working by 1996. For AFDC recipients under the age of 21, the bill takes a different tack. It would collapse about 60 different federal welfare programs into a bloc grant, which would be given directly to states with only two major provisos: They must use the money to assist low-income people, and no money could be given directly as cash assistance to young women who have children out of wedlock. States could use the money to expand adoption programs, chase down deadbeat dads, create group homes for young women and their children, or whatever else they want to try. And welfare would no longer be a matching-funds program: Federal spending would be strictly limited to 3.5 percent annual growth.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The Faircloth-Talent bill faces long odds—"If it goes any place, be surprised," says a Senate staffer—but it has served to unite many House and Senate Republicans behind real reform and, just as important, against Clinton's sham reform. Bill Kristol, head of the Project for the Republican Future, says that while serious reform may not pass this year, the GOP's goal should be "to shape the debate and position ourselves to advance more thoroughgoing changes to the welfare system next year."

It may well be possible to toughen the bill next year, especially if Republicans are successful in November House and Senate races. A Republican Senate or Republican–moderate Democrat alliance in the House could rewrite Clinton's bill, or at the very least force the administration to preserve and expand state authority to experiment with work requirements and other reforms, a position that Clinton himself has endorsed in the past. State reformers have demonstrated their seriousness about working out the problems of moving people off of welfare, and should be allowed to go to it.

Will we ever really see an "end to welfare as we know it"? It's a strong possibility, if Washington will get out of the way. In Madison, they even know the date: Wisconsin passed a law last year that will officially end the AFDC program statewide on December 31, 1998.

Contributing Editor John Hood is research and publications director at the John Locke Foundation in Raleigh, North Carolina, and a syndicated columnist.

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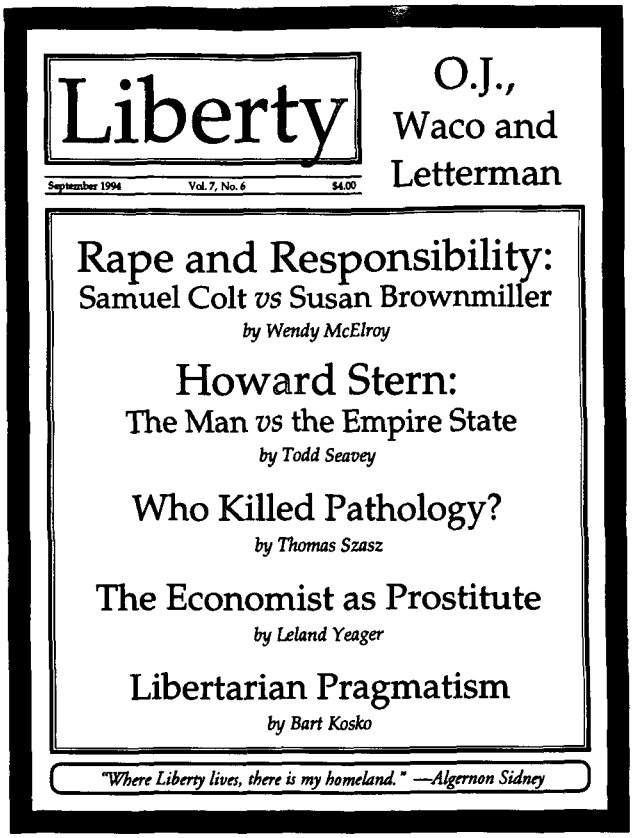

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Preservation Acts

By Rick Henderson

The property-rights movement steps out of the shadows.

BRANDT CHILD PLANNED TO BUILD A campground and golf course on land he owns outside Moab, Utah. But after he started construction, the Fish and Wildlife Service claimed that the natural springs on Child's land provide habitat for the endangered Kanab Amber-snail. The government halted construction and forced Child to fence off the property, rendering it worthless. Child claims that the effective condemnation of his land has cost him $2.5 million.

In 1986, Maine residents Gaston and Monique Roberge wanted to provide money for their retirement by selling a lot they had purchased 22 years earlier. After the Roberges got an offer of $440,000 for the land, the U.S. Army Corps of Engineers claimed that the property was a wetland and that the Roberges had let the city illegally "fill" the property with dirt in 1976. When the Roberges removed the dirt, the property became less desirable as a home site; offers to buy the land disappeared. After spending thousands of dollars hiring consultants to comply with bureaucratic edicts, the Roberges have exhausted their retirement investments, still have no offers for their land, and live on Social Security.

Richard Ehrlich owns a piece of property in Culver City, California, on which he constructed a private tennis club. The tennis club went out of business. Ehrlich then tried to get permission to build 30 condominiums on the land. Culver City, a separately incorporated town surrounded by Los Angeles, approved Ehrlich's proposal on the condition that he pay the city $280,000 so that it could build public tennis courts to "replace" the courts at Ehrlich's club. The condo association would also have to maintain the public courts after they were built.

Florence Dolan and her son, Dan Dolan: Her 1994 U.S. Supreme Court victory heralds new-found respect for property rights in the court.

Stories like these have become all too common over the past decade or so, as state, city, and federal regulations have encroached ever further into the lives of even small property owners. But as such regulations, especially those ostensibly intended to protect wetlands and endangered species, affect average property owners and business operators, hundreds of grass-roots private property organizations and inholders groups are fighting back. And people like Child, the Roberges, and Ehrlich are increasingly winning. In legislatures, the courts, and among the general public, the property-rights movement is chalking up victories.

On July 14, for instance, the House of Representatives passed an amendment to the California Desert Protection Act that could deter some regulatory "takings" of private property like those mentioned above. The amendment, sponsored by Rep. Billy Tauzin (D-La.), would prevent the government from reducing the appraised value of private property it acquires when the land harbors threatened or endangered species. If Tauzin's amendment applied to the entire Endangered Species Act, environmental regulators would have to pay Brandt Child the fair market value of his property before the snails were found.

Even though the Tauzin amendment, which passed by a 281-148 vote, applies only to the desert bill, it should help the owners of 700,000 acres of private property who would have otherwise lost most uses of their land. (See "Parking Costs," July.) And the amendment caught environmentalist sponsors of the bill, led by Rep. George Miller (D-Calif.), off guard. After the amendment passed, Miller temporarily removed the bill from consideration; it passed two weeks later, 298 to 128, with the amendment attached. Sen. Bennett Johnston (D-La.) will head the conference committee that reconciles the Senate and House versions; he has assured Tauzin and the amendment's supporters that the amendment will be part of the final bill.

THE FIFTH AMENDMENT TO THE U.S. Constitution requires the government to provide "just compensation" any time regulators or legislators "take" private property for public use. Until recently, individuals would receive payment only for those takings resulting from eminent domain—in other words, when land was condemned so that government could build a highway or some other public-works project.

But the 1985 publication of University of Chicago law professor Richard Epstein's *Takings: Private Property and the Power of Eminent Domain* provided intellectual ammunition for the argument that regulations can restrict a land owner's rights just as much as overtly condemning property. Epstein's reasoning swept through law schools and into the courts, where Reagan appointees used the new takings rationale to limit the reach of environmental regulators. Such public-inter-

AP/WIDE WORLD PHOTOS

est law firms as the Pacific Legal Foundation, the Washington Legal Foundation, the Institute for Justice, and Defenders of Property Rights represented clients who were victims of regulatory takings and filed amicus briefs in federal and state court cases.

In three federal cases, *Nollan v. California Coastal Commission* (1987), *Lucas v. South Carolina Coastal Council* (1992), and *Dolan v. City of Tigard* (1994), the U.S. Supreme Court ruled that land-use planners could no longer expect a free lunch. Regulations meant to serve legitimate public purposes must not place a disproportionate burden on the property owners being regulated.

Meanwhile, hundreds of grass-roots property-rights groups were springing up nationwide. Often these "groups" consist of the members of one family whose land was made worthless by wetlands regulations, the Endangered Species Act, or other environmental statutes. Legislators are responding to these groups, and the property owners they represent, by enacting laws that pare back new regulations.

THE PROPERTY-RIGHTS AGENDA IS ADvancing on three fronts:

1) State legislatures and state referenda. The high-profile court cases and environmental bills focus on federal court decisions and two national laws—the Endangered Species Act and the wetlands provision of the Clean Water Act. But most regulatory takings result from the actions of state environmental agencies and local planners. Not surprisingly, much property-rights ferment takes place outside Washington.

Since 1991, 36 states have considered property-protection laws. Six states enacted bills before 1994; five others passed them this year. Peggy Riegle, chairman of the Fairness to Landowners Committee, says 86 bills were introduced this year alone. These bills either require regulators to study the costs of proposed regulations or they establish procedures that allow land owners affected by regulations to receive compensation.

Voters in as many as three states will decide property-rights referenda this fall. Massachusetts voters will determine whether to repeal rent control. If it qualifies for the ballot, Floridians will vote on a property-rights amendment to the state constitution. And in Arizona, voters will resolve the fate of a property-rights bill that would require every state agency to determine the impact of new regulations on property owners and decide how to compensate land owners when any proposed regulation reduces property values.

The Arizona initiative passed the state legislature in 1992. But green groups exercised a provision in the state constitution that allows a bill signed by the governor to be brought before voters as a referendum; if the initiative fails at the ballot box, the law won't go into effect. The November vote on Proposition 300 could have national implications for the property-rights movement. Phoenix political consultant Bob Robb says the outcome "will be cited by the winning side as an indication of the popular support for property rights."

Environmentalists, who relied upon bluster and apocalyptic rhetoric to frighten legislators, have lost control of the legislative agenda.

Local politics could hurt the initiative. Robb points out that the Grand Canyon State is an unusual mix of populist conservatives and conservationists, a state that simultaneously sent Barry Goldwater to the Senate, Mo Udall to the House, and Bruce Babbitt to the governor's mansion. "The legislature is strongly pro-business and hostile to environmentalists," says Robb. "On environmental issues," by contrast, "the people have a strong preservationist ethic." Property-rights protections, though they benefit many average citizens, aren't really populist measures but protections against tyrannical majorities or powerful activist groups.

And while initiatives and referenda often provide legislative vehicles for political outsiders, qualifying and passing an initiative can take years of education and promotion and cost hundreds of thousands of dollars. Peggy Riegle says backing initiatives isn't as important for the property-rights movement as lobbying legislators because many lawmakers are receptive to land owners and have passed property-rights bills. Arizona's vote may test the movement's broader appeal.

2) Federal courts. The *Dolan* decision marks a departure from earlier takings cases for two reasons: It prohibits the regulators' use of "unconstitutional conditions" in land-use restrictions, and it requires the government to prove—before enforcing regulations—that there is a "rough proportionality" between its regulations and the "legitimate state interests" it is trying to advance.

The Court has traditionally prohibited governments from forcing individuals to surrender civil liberties in exchange for other rights. For instance, it clearly would be unconstitutional for a city to permit a person to build a home only if the home owner gave up his right to vote in the next election. The *Dolan* decision extended the unconstitutional conditions doctrine to property rights. Here, it ruled that a business owner can't be forced to build a public bike path in exchange for a permit to expand an existing hardware store without giving the owner compensation.

THE COURT ALSO CHALLENGED THE LONGstanding notion that business regulations are less important than restrictions on free speech or other civil liberties. Since the 1930s, the courts have established a hierarchy of rights: Certain civil liberties, such as voting and free speech, have received greater protection than property rights. As a result, most business regulations, no matter how draconian, have withstood constitutional challenges.

In *Dolan*, the Court began to restore property rights to the level of other civil liberties. Governments must now prove that their regulations, including land-use restrictions, are proportional to the public purposes they are trying to achieve. Oth-

erwise, courts can strike down those regulations. Chief Justice William Rehnquist wrote for the majority: "We see no reason why the Takings Clause of the Fifth Amendment, as much a part of the Bill of Rights as the First Amendment or Fourth Amendment, should be relegated to the status of a poor relation in these comparable circumstances."

While the *Dolan* case dealt with an "exaction" (a condition placed on land use) that involved an actual invasion of private property, the Court strongly suggested that certain development fees and other monetary exactions might be unconstitutional as well. Three days after *Dolan* was decided, the Court ordered the California Court of Appeals to reconsider its ruling against Richard Ehrlich, the California tennis-club owner.

Ehrlich challenged the impact fee Culver City assessed, arguing that the tennis courts he operated were private. The Court of Appeals agreed with the city: "We do not find the distinction between public and private recreational facilities to be compelling," ruled the court. "The City had a legitimate need for community recreational facilities, whether public or private, and both the land-use restriction and the mitigation fee served that same need."

Counters James Burling, senior property-rights attorney at the Pacific Legal Foundation, "The city may need additional lights, sewage treatment, and streets" as a consequence of building new condos. "But there's not a *need* for a new park or tennis courts." PLF will file an amicus brief in support of Ehrlich.

Since nearly 90 percent of local governments impose monetary exactions on new development (up from 10 percent in 1960), a favorable ruling in *Ehrlich* could foreclose many land-use restrictions. "Applied consistently," says attorney Scott Bullock of the Institute for Justice, "the *Dolan* precedent will strike down unjustified exactions and largely end what was a growth industry in government-condoned extortion."

3) Congress. Tauzin's amendment to the desert bill was the fourth major victory for the property-rights movement in this session. Earlier, property protections were added to the bills establishing the National Biological Survey and elevating the Environmental Protection Agency to cabinet status. After the amendments were added, greens removed both bills from consideration.

The Senate also added amendments to the Safe Drinking Water Act requiring a "takings-impact analysis" for any regulation that might cause a taking of property and mandating cost-benefit analyses for any regulations costing more than $100 million. (See "Bill Killers," August/September.) In the House, property-rights advocates and representatives from small towns that might not be able to afford expensive new purification systems may add even tougher amendments. Greens may take the drinking water bill off the table for the rest of the year as well.

UNTIL NOW, PROPERTY-RIGHTS ADVOcates in Congress have mostly played defense, attaching amendments to noxious bills with the hope that they could weaken them. Democratic congressional barons have bottled up stand-alone proposals by Tauzin, Rep. Jimmy Hayes (D-La.), and former Sen. Steve Symms (R-Idaho) in the environment committees, never letting them reach the floor of the House or Senate for a vote.

But property protectors are fighting back. Tauzin has proposed HR 3875, the Private Property Owners Bill of Rights. Tauzin's bill would define as a taking any regulation under the Endangered Species Act or the wetlands provision of the Clean Water Act that reduces a land owner's property value by 50 percent or more. To keep the bill from being gutted or bottled up in committee, he has filed a discharge petition—a procedure that requires the entire House to consider the bill without any modifications. Before the petition can take effect, Tauzin must collect the signatures of 217 other members. At press time, the discharge petition had 140 signers.

In the Senate, Phil Gramm (R-Tex.) will soon introduce a more radical bill, the Private Property Rights Restoration Act. Gramm's bill would assume that a taking occurs when any new regulation "restricts, limits, or otherwise infringes a right to real property that would otherwise exist." The bill would give a property owner standing to sue the government for compensation when a regulation temporarily or permanently reduces the owner's property value by at least 25 percent or $10,000, whichever is less. (The bill would exempt regulations that prevent pollution and other "public nuisances.")

The Institute for Justice's Bullock says lawmakers are proposing bills that more closely conform with court rulings. "Legislators are saying, 'If the Court takes the Constitution seriously, we should too,'" he says. "These decisions encourage [legislators] to be bolder."

Such boldness may be needed. Paul Kamenar, president of the Washington Legal Foundation, warns that bills that rely on "neat formulas" for determining compensation won't keep regulators entirely at bay. "The government will still try to get around the formula," he says. "A bigger help would be to clear the underbrush of procedural hurdles"—such impediments as obtaining permits, hiring consultants, and going through lengthy administrative appeals—"a property owner has to get through to make a claim against the government." Those hurdles, he says, "discourage 99.9 percent of property owners who do have a legitimate claim from pursuing it in court."

While constitutional law changes incrementally, property owners seem to have the momentum. Riegle says environmentalists, who have relied upon bluster and apocalyptic rhetoric to frighten legislators into action, have lost control of the legislative agenda. In the past, she says, property-rights advocates were on the defensive, "always holding a shield while environmentalists were carrying the sword. Now we have the sword. And they're not good at playing defense." ®

Rick Henderson is Washington editor of REASON. *Lisa Snell, a fellow of the Charles G. Koch Charitable Foundation, provided research assistance for this article.*

Desert Boom

By Robert Pollock

Venture capitalists win approval for a private free-trade zone in Israel.

"TILL NOW THE WALLET COMES out—and the government takes half," declared Knesset member Raphael Eitan. He was explaining why despite a highly skilled labor force, excellent ports, and a prime location at the crossroads of Europe, Africa, and Asia, Israel's economy stagnates. Burdensome tax and regulatory policies have long made it a terrible place to do business. That is, until now. "Now" was June 20, the day the Knesset approved the creation of Israel's first free-export processing zone (FEPZ).

More than 100 companies have already expressed interest in locating in the zone, including clothing manufacturers Liz Claiborne, Phillip van Heusen, and London Fog, as well as chemical, trade, telecommunications, and pharmaceutical firms. That's because they will benefit from exemptions from tariffs, personal and corporate income taxes, and a whole host of regulations. And Israel is the only country in the world to have signed free-trade agreements with both the United States and the European Union, giving companies in the zone a competitive advantage abroad, too. In return for the hands-off treatment, Israel expects the zone to generate as many as 50,000 jobs within four years.

The FEPZ will likely cover about 500 acres located near Beersheba in the Negev desert. It will operate as a privately run, semi-autonomous laissez-faire state. In the coming months, Israel will award the rights to serve as concessionaire in the zone. The winning investors will purchase the land and be responsible for providing all infrastructure and services. In return, they will get to lease the land for a profit.

Knesset member Michael Eitan: "Those afraid of the law are not afraid of its failure, because private money, not taxpayers' money, is at risk. Rather, they are afraid it will succeed and that the bureaucrats will lose their power."

This means roads, water, sewers, electricity, and telecommunications, as well as police and fire protection, will be privately provided—another bonus for potential tenants. Backers expect the zone to be able to offer the lowest telecommunications rates in the world. In an information economy that can mean huge savings.

The FEPZ is not unique as a concept. The first free zone started in Taiwan in the '60s. And depending on how you define them, there are now between 120 and 150 special free-market zones in 70 countries. But Israel's FEPZ is important because it may herald a coming wave of privately created, financed, and run free-market zones. It was not proposed by any politician nor planned by any government. It began as an offer from a group of Jewish-American venture capitalists that Israel quite literally couldn't afford to refuse.

ALTHOUGH IT MAY SEEM ODD THAT A Labor government would accept such an offer, the economic situation forced a move away from government intervention, says Jerry Stoch, an Israeli consul for economic affairs. High inflation and unemployment in the '80s were followed immediately by a tidal wave of immigrants from Russia, Ethiopia, Bosnia, and elsewhere. They needed jobs. Meanwhile, thousands of Israel's own entrepreneurially inclined citizens were emigrating to the United States. And without general economic growth, the new Palestinian-administered regions promised to provide fertile ground for militant activity.

But with Israel's tax and regulatory climate, no relief was in sight. Getting government approval for a new business venture might take two years. And at the $40,000 income level, it cost an employer $3.60 to give an employee an extra dollar of after-tax income. Even at the lowest pay levels, that ratio was 2-to-1.

Reliance on foreign aid long allowed Israel to forego much-needed economic reforms. Last year, the unilateral transfers—in other words, free money—that Israel received from overseas totaled about $6.7 billion. That's more than 10 percent of its Gross Domestic Product. About $3 billion came from the U.S. government, about $3 billion more from private donors. Prominent New York real estate broker Larry Silverstein, for example, alone has raised more than $250 million annually for Israel.

But when it came to investment, even the donors said no way. Upon passage of the FEPZ bill, Member of Knesset Amir Peretz (Labor) recalled how he once said to a donor, "Stop building us buildings, we have enough; stop building clubs and recreation centers. Build us a factory. But the donor replied: 'Your bureaucracy ruins everything. Forget attracting investment and entrepreneurship.'"

Enter David Yerushalmi, a former California real estate developer and lawyer who had recently emigrated to Israel. As it happened, he was also a former student

FLASH 90

of Robert Loewenberg, president of the Institute for Advanced Strategic and Political Studies, the Jerusalem-based think tank where the idea for the Israeli FEPZ originated. The possibility of an FEPZ gave Yerushalmi a chance to put his business talents to work for his homeland and make a profit in return. He convinced 26 Jewish-American businessmen who had been prominent donors to Israel that they could do the same. In 1992, Yerushalmi's Israel Export Development Corporation (IEDC) offered Israeli Finance Minister Avraham Shohat a guarantee of at least $750 million in investment in return for creation of the FEPZ.

THE ROAD TO APPROVAL WAS NOT EASY. Two committees appointed by Shohat to study the proposed FEPZ rejected the idea, as did the chamber of commerce. Labor groups, academics, and many in the media invoked the images of primitive sweatshops, suggesting that Israel would be turned into a "banana republic." One Israeli journal claimed that the zone amounted to a free license to import or distribute drugs. In fact, the zone will be subject to most of Israeli law. As Yerushalmi pointed out, it is unlikely that close to a billion dollars would be invested without significant assurances of the zone's security and responsibility.

Yerushalmi persuaded six U.S. senators and 13 representatives to send letters to Prime Minister Rabin backing the zone. Several mayors in the economically depressed Negev wrote the Ministry of Finance pleading for the creation of an FEPZ. And the IEDC provided numerous studies to address the arguments of opponents. In the end, Shohat and Rabin ignored the committees' findings, and the FEPZ emerged from the Knesset virtually unchanged from the original proposal. The legislation passed with unanimous support from both the Labor and Likud parties. All three votes against were cast by the communist Hadash party.

Even statist politicians could not ignore the evidence rolling in from the Far East. When just Hong Kong was free and prosperous, it could have been a fluke. But when China's special-processing zones gave it the world's fastest-growing economy, the evidence was just too strong to ignore. Even tiny Portugal at the far end of the Mediterranean employed FEPZs as part of a strategy that gave it Europe's fastest growth rate.

The rapidly increasing number of free-market zones worldwide bears witness to the birth of the quicksilver capital theory in action. Because technology has increased the mobility of capital, governments must shape up before business ships out. This means government policy will increasingly be dictated by economic reality, not vice versa. In the case of the Israeli FEPZ, not only did capital actively seek out a business-friendly environment, it actively worked to create one.

Israel's free-export processing zone is important because it was not planned by any government. Not only did capitalists seek out a business-friendly environment, they actively worked to create one.

The emerging reality is not lost on the Israeli government. Amid the orgy of praise for free markets following the bill's passage, MK Michael Eitan (Likud) observed, "Those afraid of the law are not afraid of its failure, because private money, not taxpayers' money, is at risk. Rather, they are afraid it will succeed and that the bureaucrats will lose their power. I say to these reactionaries: The world is changing. The time has come to change your economics textbooks." MK Gedalya Gal (Labor) added, "If it succeeds, if there is growth and new jobs, then we can consider widening the FEPZ to include the entire country."

Indeed, it now seems impossible for the Israeli government to stop economic liberalization from spreading to the whole country. The clamor to join an FEPZ will come from anyone who could benefit from deregulation, no taxes, and no customs. That means just about everybody doing business in Israel.

BUT NOT JUST IN ISRAEL. LATE LAST YEAR, Gateway Ventures, also headed by Yerushalmi, signed an agreement with the autonomous Russian republic of Chuvashia, an industrial area on the Volga River, to develop and manage the first free-trade zone ever in the former Soviet Union. Yerushalmi plans to locate Israeli and U.S. high-tech companies in the zone, and estimates the project will cost about $2 billion. The prime minister of Georgia invited Gateway to tour his country as well, suggesting they set up an information technology center in a free-trade zone to be located there. And Gateway is also working on setting up free-trade zones in Hungary, Dubai, the Baltic states, other former Soviet republics, and countries in the Far East.

For now, Yerushalmi's energies are focused on winning concession rights in Israel's FEPZ. As the zone's original backer, IEDC seems favored to get the job. It has already pre-leased 50 percent of the space, has Merrill Lynch and Salomon Bros. ready to underwrite the first phase of construction, and will be ready to break ground early next year if it wins.

It turns out that Marx was right about the power of capital. But happily it's governments, not workers, being pushed around. Technology has made this a smaller world, and the resulting increase in mobility has made capital a force capable of liberating peoples worldwide from the grip of controlling states. As Likud MK Raphael Eitan declared after the bill's passage, "We have reached a time when we must put an end to government interference in trade and the economy. We must free ourselves from the government centralization of the past and bestow freedom, especially the freedom to make money." ®

Robert Pollock is REASON*'s 1994 Burton C. Gray Memorial intern.*

Crime Time

By Martin Morse Wooster

The age of "Kojak liberals"

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I'M FROM VICTIM ASSISTANCE... CAN YOU TELL ME WHAT HAPPENED TO YOU?
WELL, I WAS ABUSED BY MY PARENTS...
POLICE

CHIP BOK

CRIME HAS BECOME THE most hotly contested social policy issue of the 1990s, but the debate is decidedly overheated. Statistics issued by the Federal Bureau of Investigation and the Justice Department suggest that if you live in an area that isn't infested by drug dealers (and, of course, if you don't happen to *be* a drug dealer), your odds of being a victim of violent crime are about the same as they were 10 years ago.

How has crime fighting become such a prominent issue without a growing group of victims of crime? The most important reason is a gradual change in the attitudes of the Democratic Party. Until 1985, it was easy to tell the difference between Democrats and Republicans on crime issues. Democrats were the namby-pamby, goo-goo eggheads who thought hardened criminals could become good citizens with plenty of Prozac, hugs, and herb tea. The Republicans were the tough-as-nails types who delighted in tossing people in jail and throwing away the key, even if the jails didn't have keys.

But in the early '90s many Democrats became what *Washington Post* columnist E.J. Dionne called "Kojak liberals," trying to show that they were as tough on crime as their Republican rivals. As a result, far too many campaigns hinge on how eager the candidates are to send people to jail.

As president, Bill Clinton continues the effort he began as governor of Arkansas to be a no-nonsense crime fighter. This concern is due in part to his other failures. Ruth Shalit reports in the July 18 *New Republic* that high-ranking Clinton staffers were convinced that, if other administration proposals failed, the crime bill could be, in the words of a senior Justice Department aide, "the major domestic accomplishment of Clinton's first term....If health care doesn't work, if welfare reform doesn't work, this [crime bill] is going to be the thing."

While one branch of the government says it's fighting crime, other government agencies are turning previously law-abiding citizens into "criminals" by creating more punitive regulations. As James V. DeLong observes in the March *American Enterprise*, many activities that were not illegal 10 years ago now are. Landlords can have their buildings seized if tenants are found using drugs. People who don't properly fill out forms required under the Clean Air Act can go to jail. Employees of corporations can be considered criminals if they can't tell the courts what a petty cash fund was used for, or why a particular investment doesn't appear on company books.

DeLong observes that what he calls "the New Criminalization" has both economic and spiritual consequences. Corporations have to spend countless hours gathering permits and obeying bureaucrats, and even then they may unwittingly commit crimes; two-thirds of corporate lawyers surveyed by the *National Law Journal* in 1993 said their companies, due to the uncertainty and complexity of the law, had violated an environmental statute. (See "Crimes Against Nature," December 1993.) The result is an erosion of our sense of what is right and what is wrong. "Under the New Criminalization," DeLong observes, "with its technical complexity and often arbitrary provisions, no one can rely on an internal moral compass or on common sense as protection. The 'reasonable person' standard is obviated."

EVEN AS PEOPLE ARE SENT TO JAIL FOR minor crimes, high-profile defendants appear to be set free due to technicalities in the law or to variants of the insanity defense. The average American, flooded with reports about the Menendez brothers, the Bobbitts, the trials resulting from the Los Angeles riots, as well as the guests on salacious talk shows, might well conclude that anyone can finagle his or her way to freedom with a sad story and slick attorneys.

That analysis is only partially true, reports Stephanie B. Goldberg in the June *ABA Journal*. Not many defendants use variations of the insanity defense, and three states have abolished insanity defenses entirely. Some "victimization" defenses, most notably battered woman's syndrome, are grudgingly accepted by the courts. But the requirement that battered women prove that they were in imminent danger of harm before they maimed or killed their husbands limits this defense. State University of New York at Buffalo law professor Charles P. Ewing says jurors are often skeptical about this defense

because "99.9 percent of battered women don't kill their abusers."

More esoteric defenses are less successful. "Battered children's syndrome" may have helped free the Menendez brothers, but according to attorney Paul Mones, author of *When a Child Kills*, when children kill their parents, 95 percent of the time the youths are convicted and go to jail. The courts rarely allow defenses based on premenstrual syndrome, alcoholism, compulsive gambling, "black rage," or "urban stress syndrome" (which Milwaukee defense attorney Robin Shellow claimed had compelled her teenage client to kill another teenager for her leather coat).

Post-traumatic stress syndrome is recognized by some courts, though, and isn't just a defense for troubled Vietnam vets anymore. But in a 1993 study by the University of Massachusetts Medical Center, only 28 out of 8,163 defendants surveyed who had tried to claim insanity said they were suffering from post-traumatic stress syndrome, and those defendants were no more successful in getting off by convincing the courts that they were insane than other defendants who used more common defenses.

What may be true is that juries are less reliable and impartial than they used to be. In the July *Washington Monthly*, Daniel Franklin, in a review of Stephen J. Adler's *The Jury*, cites some alarming trends about the decline of juries. Well-educated people can usually exempt themselves from jury service nowadays. In New York, for example, lawyers, clergy, doctors, sole business proprietors, podiatrists, Christian Scientists, and embalmers can all exempt themselves. And many defense attorneys, through "peremptory strikes," can exclude people who may have read news articles about a particular case, in favor of people who know nothing about the defendants.

As juries are increasingly dominated by the less educated and trials become more complex, jurors become more confused. Adler's book cites a 1989 case in which tobacco manufacturer Liggett and Myers sued its rival, Brown and Williamson, for violating the Robinson-Patman Act, which prohibits companies from implementing "predatory" pricing schemes designed to drive competitors out of business. After seven months of testimony, one juror asked what, exactly, the Robinson-Patman Act was.

SO THE LAW THESE DAYS IS MESSY AND confused, with courts clogged with arcane trials, "criminals" who victimized no one, and politicians demanding that sentences be lengthened and judges be "tougher." Given this morass, it may well be that the best thing the Clinton administration can do to fight crime is to rein in its regulators (particularly at the Environmental Protection Agency). Congressional Republicans who are properly skeptical of the federal government's efforts in social policy ought to extend their caution to crime-fighting activities. The failures of the government to improve American education or to reduce welfare dependency are well-documented. If the federal government can't improve our schools or cut the welfare rolls, how can we expect the feds to cut crime rates?

It may well be that the best way to fight crime is not to throw money at police departments, but to use existing funds more efficiently. In the Summer *Policy Review* Bret Schundler, the Republican mayor of Jersey City, complains that union regulations prohibit him from assigning more cops to street duty or reducing wages so that more police can be hired. While his city's per-capita income is $10,000, Schundler writes, the average Jersey City police officer, with salary, overtime, and benefits, earns $90,000 a year.

Rather than getting more money from the federal government, Schundler says, he could do a better job improving police assistance if he had more freedom to push officers out from behind their desks and into squad cars and hire new officers at more reasonable wages. "Bill Clinton's crime bill," he says, "in the finest Democratic party tradition, does little more than throw additional money at the crime problem while shifting the cost of policing from the local to the national taxpayer."

In the March *Governing*, Penelope Lemov reports on another useful reform that was recently adopted by the North Carolina legislature. In North Carolina, like many states, the cost of running and building prisons has soared, while irresponsible politicians ranted about imposing ever-stiffer sentences. So a bill was passed that requires any North Carolina legislator who introduces a bill lengthening a sentence for a particular crime to report how much the longer sentence will cost the state. "The idea of being able to stand up and be tough on crime without worrying about how to pay for it has got to stop," North Carolina Superior Court Judge Thomas W. Ross told Lemov.

Journalists can also do a better job informing the readers about what police actually do. Teachers are very articulate about the problems they face in their classrooms, and some social workers and sociologists have done a good job in describing the mind-numbing life of the welfare caseworker. But police officers do not do a good job in telling the public what they do, and the result is that far too many citizens, engorged by "reality" shows on the networks, believe that police spend their days kicking down doors and blasting away at Uzi-toting drug lords.

But, as George Kelling and Catherine Coles observe in the Summer *Public Interest*, many of the useful things police do to improve communities—asking tenants to turn down noisy stereos, suggesting that loiterers move on, detaining aggressive panhandlers—do more to help citizens feel safe and secure than SWAT teams or other flashy efforts. But such low-key, low-cost activities are hardly likely to win support from career politicians.

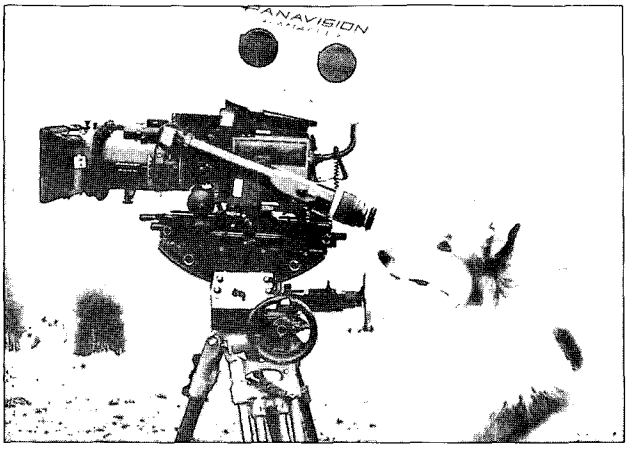
Long-term, local, incremental efforts will most likely do more to fight crime than any national effort. The proper response to any Washington-based solon's speech about crime is to take the cynicism one normally has for politicians—and double it. ®

Contributing Editor Martin Morse Wooster is the author of Angry Classrooms, Vacant Minds *(Pacific Research Institute).*

Reclaiming the Vast Wasteland

By Nick Gillespie

Made-from-TV movies aren't always cinematic eyesores.



Lassie comes back: Is Hollywood going to the dogs?

IN AN AGE OF CORPORATE downsizing and diminished expectations, it somehow seems appropriate for the big screen to turn to the small screen for inspiration. That happened in a huge way this past summer, as three of the season's most-anticipated movies, *Maverick*, *The Flintstones*, and *Wyatt Earp*, reprised old TV shows. Two other films, *Lassie* and *The Little Rascals*, were inspired by TV series that were themselves inspired by movies, and the late-summer entry *It's Pat!* grew out of a skit on *Saturday Night Live*. These pictures join other recent releases such as *Dennis the Menace*, *The Fugitive*, *The Beverly Hillbillies*, *The Coneheads*, *The Naked Gun 33⅓*, *Addams Family Values*, and *Wayne's World II* in what has emerged as the number-one growth trend in Hollywood: movies based on TV material.

The wave of made-from-TV movies isn't going to crash any time soon. In fact, it's swelling into a cinematic tsunami that big-time Hollywood players are rushing to surf. Renny Harlin, the director of *Cliffhanger* and *Die Hard 2*, is producing an *American Gladiators*–based film and Penny Marshall, who herself rose to stardom on the tube's *Laverne & Shirley*, is working on a big-screen *Bewitched*. Steve Martin is set to remake Phil Silvers's *Sgt. Bilko* and Tom Cruise will undertake *Mission: Impossible*. *Home Alone* auteur John Hughes is tackling a post–*Schindler's List* *Hogan's Heroes* and writer Larry McMurtry, whose films include *The Last Picture Show* and *Terms of Endearment*, is penning a script for a new *Father Knows Best*.

BOB GREENE, PARAMOUNT PICTURES

A partial list of other TV-based projects under development includes *The Brady Bunch*; *F Troop*; *Gentle Ben*; *Gilligan's Island*; *Gomer Pyle, U.S.M.C.*; *Hawaii Five-O*; *Lost in Space*; *My Favorite Martian*; and *The Rifleman*.

What are we to make of this sudden indebtedness to TV? Some critics view it as the final moral and artistic bankruptcy of a movie industry whose stupendous lack of imagination is matched only by its gargantuan appetite for big bucks. *Time*'s Richard Corliss, for instance, derides the phenomenon as "Naked Trend 4" and sneers that the TV-based movies "give Hollywood what it wants most: a solid, safe return on its investment." Concludes Corliss, "The lemming rush to televidiocy reveals a movie industry close to creative exhaustion."

On a superficial level, the anti-TV critique hits the bull's-eye and blows away the whole target with the same shot. Moviemaking is, after all, a moneymaking enterprise, and TV-based films have a built-in recognition factor that minimizes investment risk. In fact, Brian D. Johnson of *Maclean's* quotes *The Flintstones*'s director, Brian Levant, precisely to this effect: "We're in a big money business," says Levant. "If you can find something with a presold audience, then you have a better chance of realizing a profit." And, as the number of projects in development indicates, Hollywood moguls are actively picking at TV's corpus with Jeffrey Dahmer–like intensity. While such behavior may not constitute cannibalism per se, the idea of viewing a big-screen *Gentle Ben* or *Brady Bunch* movie in Dolby Stereo SR is only a slightly less gruesome possibility.

In a more fundamental way, however, the contempt for what *Time*'s Corliss dismisses out of hand as "tele-visions" misrepresents the motion-picture industry, ignores its basic creative mechanism, and precludes a nuanced discussion of the growing list of films based on TV shows. Yes, last year's big-screen version of *Car 54, Where Are You?* was as terrible a movie as Hollywood puts out (I'm sure any of the 50 or so paying customers who saw it in its original theatrical release will back me up on this), but it was no worse than any number of non-TV-related flicks, either (*Malice*, *The Pelican Brief*, anyone?). To categorically sniff at TV-based movies is, ironically, to indulge in the same sort of snobbery that theater buffs once directed at film.

WHEN CRITICS STRESS THE PROFIT-motive angle, they indict the entire entertainment industry, not merely a current trend. They also haul out by implication the moldy argument that popular success necessarily comes at the cost of artistic integrity, a formula Hollywood refutes as often as it embraces. Long before the current slew of TV-inspired films, studio heads wanted to do two things: make movies and make money—not necessarily in that order. Hollywood has always been dedicated to the proposition that art-

ists need not starve. Hence, producers are always looking for a product with a presold audience. That's why the rights to bestsellers get snapped up and why bankable stars get big money.

In any case, a TV-based movie, name recognition notwithstanding, is no more a sure smash than a Chevy Chase film is a sure bomb (actually, the odds are much, much longer on the former). Last year's *Coneheads* and *Car 54* were certifiable flops and *The Beverly Hillbillies*, although based on one of the most popular series of all times (both in prime-time and reruns), did only mediocre business. The demand for nostalgia, it seems, is extremely elastic and depends less on the product's track record than its present performance.

If impugning TV-based movies as especially sullied by greed is myopic, then excoriating them as a sign of Hollywood's creative exhaustion borders on total blindness. Throughout its history, film has always been a hugely plagiaristic art form, exhibiting a longstanding penchant for appropriating materials from other genres. This is not necessarily a bad thing. Most movies—whether good or bad, popular or not—are based on something else.

Novels have probably been the most fertile source, but stage dramas and musicals have of course inspired countless films. Film makers also utilize non-fiction sources (*All the President's Men*), short stories (*2001: A Space Odyssey*), and even pop songs (*Alice's Restaurant*) occasionally, as the parenthetical examples illustrate, with excellent results. If anything, movies made from wholly original screenplays may be a distinct minority.

SINCE THE MOVIE INDUSTRY IS ALWAYS borrowing anyway, it is worth puzzling over the contempt for TV in particular. A large part of the answer lies in the fact that the boob tube continues to be seen as, well, the boob tube—a younger, dumber cousin to film. Despite the occasional *Marty* or *Requiem for a Heavyweight*, the big screen has more often served as source material for the small, as with shows such as *The Odd Couple*, *The Courtship of Eddie's Father*, and *M*A*S*H*. It is telling that the annual broadcast of the Academy Awards ceremony is almost always nominated for a number of special-event Emmys. TV itself defers to the movies.

So, in terms of relative prestige, TV was and still is generally viewed (albeit less harshly) as a vast wasteland to which has-been or never-were movie stars are banished. Ronald Reagan's career was hardly going gangbusters when he moseyed onto *Death Valley Days*. The same could be said of Candice Bergen and Burt Reynolds, who restarted stalled careers via sitcoms.

The film industry's recent use of TV shows, then, is a reversal of the traditional hierarchy of big and small screens, a turnabout which no doubt bothers film mavens. For the cinema to turn to TV for ideas is an aesthetic double-cross, akin to finding out that the camera angles in *Citizen Kane* were stolen from comic books.

Studio heads want to do two things: make movies and make money—not necessarily in that order. Hollywood has always been dedicated to the proposition that artists need not starve.

Beyond selectively seizing on economics and overlooking the motion-picture industry's relentless use of other media, the peremptory dismissal of TV-based movies shrugs off an even more elemental truth regarding any film adaptation, whether the source is TV or Tolstoy: The quality of a movie's source is ultimately unrelated to how it turns out on the screen.

In 1987, for instance, Tom Wolfe's *Bonfire of the Vanities* was a huge critical and commercial success as a novel. For the much-ballyhooed movie version, Hollywood packed the production with hot stars of the moment (Tom Hanks, Melanie Griffith, Bruce Willis) and a hot director (Brian DePalma, flush with success from his remake of TV's *The Untouchables*). The final result was a neutron bomb of a movie that cleared the theaters of people and the studio of its top management. But if an outstanding original source can give rise to an utterly failed movie, it's also true that mediocre material sometimes culminates in great cinema. *Casablanca* was based on a thoroughly forgettable play titled *Everybody Comes to Rick's*.

This same kind of tenuous connection between source and movie holds true for TV-based films. The real question to ask of the TV-based movies is the one that should be asked of any cinematic adaptation: Are they any good *as movies*? The short answer is the same as it is for any other sort of movie source. Some of them are; most of them aren't.

NOT SURPRISINGLY, THE MOST SUCCESSful TV-based movies are more than mere reruns playing out on the big screen. As with novels and plays, the results are best when TV shows are actively made new for the big screen by updating and revising characters, plots, and themes. This is readily apparent when looking at two recent TV-based movies that were both commercially successful and well-received by critics (even Corliss concedes they are "good"). While it seems unlikely that either *The Fugitive* or *Addams Family Values* is destined for classic status, both movies showcase how TV-based movies can succeed fully as motion pictures.

Perhaps the most remarkable achievement of the big-screen *Fugitive* is the way it took a picaresque source (the *Fugitive* series lasted four years) and reshaped it into a tightly knit plot that is fully resolved in two hours. The one-armed man's murder of Dr. Richard Kimble's wife structured the TV show by giving the falsely accused Kimble license to wander the country and have various adventures while simultaneously evading police and searching for his wife's killer. The episodic nature of the series dictated that Kimble never actually resolve his situation; the pleasure of viewing was tied to

seeing how, week after week, events conspired to keep that from happening.

For the film version to succeed, however, the opposite held true: If the action is not resolved by the movie's end, the viewer feels cheated. The movie achieved its closure by inventing an evil pharmaceutical cabal that is responsible for the plot's catalyst—the murder of Kimble's wife—and is brought to justice in the final reel. (In the TV show, the murder is ultimately found out to be a random act of violence, committed during a burglary.)

Similarly, *The Fugitive*'s main characters are remade for the big screen. Since the movie compresses events, Harrison Ford's Kimble is by turns flustered, disoriented, and rage-filled. Since the experience of being chased is new to the filmic Kimble, there is a greater sense of urgency and terror. In the TV show's two-part finale, by contrast, David Janssen's Kimble, understandably worn out by four years of false leads, false hopes, and false endings, is almost devoid of any affect.

And, in place of Barry Morse's brooding, relentless police lieutenant who becomes personally consumed by his search for Kimble, Tommy Lee Jones's U.S. Marshal Sam Gerard is a by-the-book tactician who values detached procedure over all else (a comforting thought in a post–Rodney King world). The spectacular train-wreck and waterfall sequences exploit film's panoramic potential to its fullest.

FOR ITS PART, *ADDAMS FAMILY VALUES* remains true to the perverse spirit of both its TV and cartoon predecessors while putting a very contemporary, very wicked spin on the 1992 Republican national convention theme. Just-married Fester's gold-digging bride cuts off all contact with the family, the better to carry out her plan to kill him for his inheritance. But it turns out that the Addamses are so close-knit a clan that the bad relations manifest themselves in a peculiar condition afflicting Morticia and Gomez's newborn son Pubert. The baby's jet-black hair suddenly turns into curly blond locks, and his pallid complexion is replaced by rosy cheeks. If a reconciliation is not quick in coming, the child will be condemned to go through life looking like an All-American boy.

While that sort of comic inversion of normal expectations was central to the series' humor, it takes on an added dimension in our contemporary world where norms can no longer be taken for granted. Underlying the movie is the truth that the Addamses cherish the institution of the family above all else. (When asked if his newborn is a boy or a girl, Gomez proudly blurts out, "It's an Addams!".) But what remains unclear is whether they value the family in spite of their oddness or *because* of their oddness. The same sense of indeterminate irony extends to the relentlessly deadpan cast, particularly Raul Julia as Gomez, Anjelica Huston as Morticia, and Christopher Lloyd as Fester. It is difficult to know whether something is a straight line or a punch line (more than the movie's title, it seems, recalls the Republican convention).

The movie also manages to simultaneously participate in and lampoon political correctness in a hilarious summer-camp pageant sequence in which Wednesday and Pugsly, dressed as Indians, attack campers dressed as Pilgrims. Like *The Fugitive*, *Values* is shot with the big screen in mind, featuring a richly textured, cavernous mansion setting and a climax in which Pubert is slung about the house —and the Earth's atmosphere—with a reckless abandon that would have been lost on the small screen.

Both movies, in other words, succeed because they have been extensively refashioned with the big screen and a new audience in mind. While there's little doubt that any number of painfully insipid, unwatchable TV-inspired flicks are yet to come, it is worth remembering that the tube is merely one source among many. Far from being a sign of creative exhaustion, the embrace of TV may provide film makers with the basis of some very entertaining movies. ®

Nick Gillespie is assistant editor of REASON.

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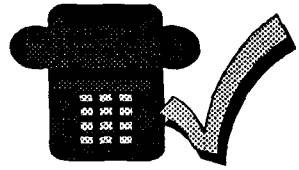

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By Rick Henderson

Dead Right, by David Frum, New York: Basic Books, 256 pages, $25.00

I HOPE DAVID FRUM'S SOCIAL NETWORK isn't linked exclusively with the conservative movement, because if it is, he's going to be a lonely guy. In *Dead Right*, a crisply written, incisively argued book, the *Forbes* legal writer, former *Wall Street Journal* editorialist, and native of Canada skewers American conservatism for straying from its anti-statist roots. Except for a few conceptual problems near the end, this book uses straight talk to tell conservatives why they've failed and how they might make themselves relevant again.

Americans have overwhelmingly rejected the New Deal liberalism that dominated the nation's politics from the 1930s through the 1970s. But, Frum says, conservatives haven't found a coherent agenda to replace statism.

In the '60s and '70s, Ronald Reagan became a conservative icon—and the movement's political star—precisely because he attacked federal programs with the ferocity of Barry Goldwater. Reagan's 1980 presidential victory gave the right, in Frum's view, a chance to engineer a political realignment. Conservative promises to defeat the communists abroad and slash the federal leviathan at home could have routed the bedraggled left.

Yet as the election drew near, says Frum, Reagan transmogrified himself into a sunny supply-sider, promising that the federal government could simultaneously cut tax rates, boost defense spending, maintain welfare payments, and balance the budget. Reagan had made promises that he couldn't keep without alienating a substantial portion of his base.

Frum asserts that conservatives read too much into Reagan's victory. The tax revolt that helped bring Reagan to power was not a call for limited government. After all, Joe and Jane Suburban are perfectly happy with the government subsidies they receive. "Governors and mayors," writes Frum, "face voters who profess to prefer budget cuts to tax increases. But those same voters continue to expect lavishly equipped suburban high schools, subsidized tuition at state colleges, toll-free highways, and environmental improvements at others' expense." Meanwhile, federal programs subsidize retirees, veterans, farmers, mortgage holders, and college students—in other words, most Americans.

The Reaganites faced a choice: Cut the size and scope of government and face unhappy voters accustomed to receiving subsidies, or change the subject. Frum convincingly argues that conservatives chose the latter. "Conservatives have lost their zeal for advocating minimal government," he writes, "not because they have decided big government is desirable, but because they have wearily concluded that trying to reduce it is hopeless, and that even the task of preventing its further growth will probably exceed their strength." Conservatives have become obsessed with short-term results—winning the next election—with the likely consequence, in Frum's view, that they will become peripheral political players.

As the right makes peace with statism, Frum says, the movement is becoming incapable of confronting the problems facing American society, from illegitimate births to raging government debt to the culture of victimhood. He blames the welfare state, in all its forms, for "function[ing] as a political safety belt, reducing the riskiness of all our lives." And reducing that risk undermines the bourgeois virtues that made America great. "The children of a self-made man are different from their father," he writes, "more optimistic, often more generous, more sensitive, and more tolerant, but less careful, less provident, less hard-working, less self-controlled. In the same way, the citizens of a socially insured America will act and think differently from the citizens of self-reliant America."

David Frum: "Conservatives have lost their zeal for advocating minimal government," he writes, "not because they have decided big government is desirable, but because they have wearily concluded that trying to reduce it is hopeless."

Frum divides today's conservatives into three camps: optimists (headed by Jack Kemp), moralists (presided over by Bill Bennett), and nationalists (led by Pat Buchanan). "They differ about many things," says Frum, "but all agree that the time has come for conservatives to quit fretting about the power of the central government and to begin using it."

OF THE THREE GROUPS, FRUM LIKES THE optimists best. And why not? Who wouldn't be drawn, at least initially, to the sunny, dynamic message of the Kemp Republicans? Kemp "refused to mix his pro-growth capitalist cocktail with the faintest tincture of budget-cutting bitters," says Frum. "This was—it was said by conservatives and nonconservatives alike—conservatism with a human face."

Unfortunately, many of these cheery folks—notably Kemp and (until recently) House Minority Whip Newt Gingrich—profess that a growing economy would let conservatives reform the welfare state without cutting anybody's benefits. The optimists agree with Charles Murray that

DANIELLE CRITTENDEN

free housing, food, health care, and welfare's other enticements give unskilled young persons a huge incentive to go on the dole rather than accept low-paying jobs. But they don't take the next logical step and advocate Murray's suggestion to "end welfare as we know it" by ending welfare. Period.

Instead, the optimists want to reconfigure existing programs so that the incentives change. By embracing the "empowerment" agenda, the optimists don't want to eliminate transfer programs; they want to make welfare efficient and entrepreneurial. But the empowerment agenda, by itself, will always have trouble delivering meaningful results. As Frum notes, enterprise zones won't draw large infusions of capital as long as relatively crime-free, low-tax, deregulated suburbs exist nearby. Similarly, tenants may run public housing projects better than bureaucrats, but experiments with tenant management have resulted in paltry savings for taxpayers.

As "big government conservatives," optimists face opposition from limited-government advocates. So to win elections, optimists must reach out to moderates who believe it's mean to cut welfare. Kemp told Frum that, at the polls, budget-cutting "Scrooges" will always lose to the "Santa Clauses" of the left. "My view," Kemp said, "is that growth is the only political model that can compete with the Santa Claus of the Left." The pro-growth message may help candidates win elections near-term, but unless policy makers boldly cut programs, debt and overregulation will continue, and the problems of the underclass will remain intractable.

Moralists such as William Bennett, Irving Kristol, and education reformer Chester Finn also reject the Charles Murray solution to welfare dependency, but for different reasons. First, eliminating welfare "requires conservatives once again to embark on the hopeless struggle to get rid of a federal program (actually a slew of programs) that will be defended unto death by powerful constituencies [in Congress] and that influence noisy voices in the media," writes Frum. Not an easy way to win elections.

And, says Frum, the moralists believe Murray is too optimistic. Murray argues that removing subsidies for food, medical care, and housing when a woman bears a child out of wedlock would drastically reduce illegitimacy among the underclass. The moralists disagree. "Once welfare has brought a class of dependent mothers and violent sons into existence [the moralists argue], the abolition of welfare may well serve merely to push them deeper into violence and squalor."

Bennett and his allies, Frum says, blame the moral relativism encouraged by popular culture—which is controlled by liberal elites—for the pathologies of the underclass. "In a curious way," he writes, "moralist conservatives agree with their liberal opposite numbers that the poor are victims."

Isn't it weird, asks Frum, "that conservatives, who have worked so hard to destroy the public's faith in the wisdom and goodness of government, could now talk about government exhorting people to virtue?"

Consequently, the moralists have begun "to dismiss the elimination of welfare and to ponder instead greater interventions into the lives of the poorest of the poor." All for the poor's benefit, of course. Isn't it weird, asks Frum, "that conservatives, who have worked so hard to destroy the public's faith in the wisdom and goodness of government, could now talk about government exhorting people to virtue?"

AMONG CONSERVATIVES, OPTIMISM APpeals to would-be policy makers, moralism to intellectuals. But most conservatives are neither. Enter Pat Buchanan and the nationalists who cater to "America's nationalist hard core, people who felt aggrieved and abused not so much by foreigners as by alien elements within their own country." Unlike the moralists, who are obsessed with the relativism practiced and preached by left-wing elites, nationalists believe that America's enemies live in the ghettoes and barrios. By 1992, nationalists believed America had become, Frum says, "two nations—European America and Third World America. One was Buchanan's America; the other was a constant menace to it." Frum has already skewered Buchanan in *Commentary*; *Dead Right* gives Frum the opportunity to go after the idea men behind Buchanan, led by Thomas Fleming, Samuel Francis, and the other writers at the paleoconservative monthly *Chronicles*.

It appears that nationalists want to turn back the clock to the '50s—whether they prefer the 1950s to the 1850s is unclear—those days when America was 85 percent white and people with dark skins or non-European backgrounds couldn't encroach upon "mainstream" American society. Writing about then–Supreme Court nominee Clarence Thomas, Ludwig von Mises Institute President Llewellyn Rockwell suggests he prefers the Jim Crow South to contemporary America: "Thomas calls the segregation of the Old South, where he grew up, 'totalitarian.' But that's liberal nonsense. Whatever its faults, and it certainly had them, that system was far more localized, decent, and humane than the really totalitarian social engineering now wrecking the country."

Whatever notoriety the nationalists have mustered has resulted from their opposition to immigration. Immigrants, the nationalists allege, are destroying American culture. *Washington Times* columnist Sam Francis, says Frum, "believed that the authentic America was in danger from almost any infusion of new ethnic types, white or nonwhite: 'As for immigrants from less backward countries [Francis wrote], we should balance considerations of whatever gains they might bring to our economy with at least equal consideration of their long-term impact on our cultural identity (including our economic and scientific culture).'"

Nationalism, argues Frum, "simply im-

ports left-wing identity politics into a new context. If the rights of blacks, gays, and Hispanics were to be asserted, why not those of middle-aged Irish Catholics or white Southerners?" He concludes that nationalists "are truly multiculturalism's children."

Despite the nationalists' antipathy for federal regulations and D.C. bureaucrats, nationalism, too, is not a philosophy of limited government. During his 1992 presidential campaign, says Frum, Buchanan pushed only three budget cuts: He would cut the 1990 congressional pay raise in half, eliminate the National Endowment for the Arts, and end foreign aid. Savings to taxpayers: $13 billion, or less than 1 percent of the federal budget.

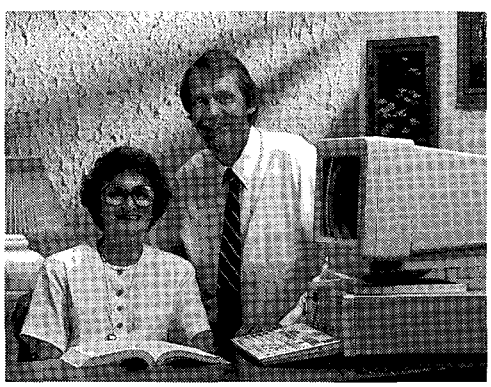
WHAT'S A CONSERVATIVE TO DO? FRUM advocates slashing subsidies and abolishing agencies. Unfortunately, as he tries to make the case for a Coolidge-sized federal government, Frum can't help taking a gratuitous shot at libertarians, his natural allies.

Associating himself with English political theorist Edmund Burke, he writes, "It is not to maximize liberty as an end in itself that conservatives have advocated minimal government. They have advocated it because they admired a certain type of character—self-reliant, competent, canny, and uncomplaining—and minimal government was the system of government under which the character they admired flourished best."

Many libertarians are equally concerned with maintaining the character of a free people, of course. In part, Frum's problem seems to be discomfort with the somewhat anarchic American tradition of natural liberty—the notion that, as P. J. O'Rourke has put it, "There is only one basic human right, the right to do as you damn well please. And with it comes the only basic human duty, the duty to take the consequences." Frum the self-styled Burkean omits O'Rourke's second sentence. And Frum the Canadian may simply be suffering mild culture shock. His native country's motto is, after all, "peace, order, and good government," a far cry from life, liberty, and the pursuit of happiness.

Frum worries about the use of state power to undermine "community" values. In a chapter that (correctly, for the most part) discounts the power of the religious right, Frum argues that "'don't tread on me' libertarianism" is "intellectually contradictory and therefore difficult to translate into public policy." He then holds up Massachusetts Gov. William Weld as an example of a "libertarian" politician who has foundered because of the "contradictions" within his philosophy.

Weld harbors contradictions, all right, but they result from his inconsistent application of libertarianism. Weld initially described himself as a "filthy supply-sider," and cut both taxes and spending in



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his first budget. But he also promotes environmental regulations that impose huge costs on consumers and property owners. And Weld's "civil libertarian" side is, in fact, thoroughly statist.

He backs anti-discrimination laws permitting broad state intrusions into the private affairs of citizens. He also opposes any government restrictions on abortions, even those in the third trimester. Frum cites Weld's left-leaning social policies to assert that any libertarian politician who wants to restrain "majoritarian morality" must become a statist.

Buchanan-style nationalism, argues Frum, "simply imports left-wing identity politics into a new context. If the rights of blacks, gays, and Hispanics were to be asserted, why not those of middle-aged Irish Catholics or white Southerners?" He concludes that nationalists "are truly multiculturalism's children."

Sorry. Civil-rights laws *are* reflections of "majoritarian morality," at least as far as they are passed by legislatures rather than enacted by judicial fiat. A libertarian vision of civil-rights laws might prohibit discrimination at government facilities but would stay away from actions that take place among consenting parties on private property. Similarly, libertarians have differing views on the morality of abortion but universally oppose using tax dollars to subsidize abortions. Both policy prescriptions limit government and keep "majoritarian morality" at bay.

You get the impression that, like the moralists, Frum believes that government must affirmatively encourage or prohibit every type of social interaction. Frum's view seems to be that "there ought to be a law" defining everything from friendships to commerce to living quarters to conjugal relations. His nascent communitarian vision is hardly consistent with his campaign for limited government.

In contrast with the communitarian conservative view that private, consensual conduct is subject to public scrutiny, libertarians promote a "civil society" outside the public sphere, in which individuals voluntarily form communities and make rules which are subject to the consent of the community's members. And unlike the communitarian vision, in which communities are monolithic organisms whose members live zombie-like and in lockstep, a libertarian vision recognizes that individuals in fact join many communities—a person can simultaneously be a Presbyterian, a softball player, a parent, a weekend auto mechanic, and a mystery reader—and that divergent communities may at times exist peacefully side by side. For the most part, the state shouldn't interfere with those communities.

The bourgeois virtues Frum praises—diligence, prudence, thrift, willingness to take risks—are indeed essential for the development of civil society. If conservatives wish to promote those values, they must decide which model of governance they prefer: Burke's demand for order, or the Founders' insistence upon individual rights.

Despite this confusion, Frum recognizes that the burdens of the welfare state will someday result in a fiscal crisis and a further disintegration of civil society. His advice to conservative intellectuals like Bill Kristol: Discard "all consideration of what the public wants to hear, and tell ...the public what it needs to know when the crisis does arrive." Conservative intellectuals, he concludes, "should learn to care a little less about the electoral prospects of the Republican Party...and do what intellectuals of all descriptions are obliged to do: Practice honesty, and pay the price." ®

Rick Henderson is Washington editor of REASON.

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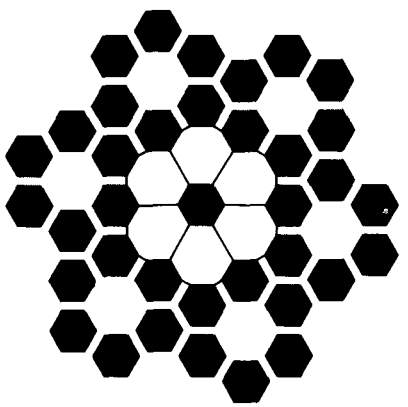

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Reactionary Feminism

By Tama Starr

Who Stole Feminism?: How Women Have Betrayed Women, by Christina Hoff Sommers, New York: Simon & Schuster, 320 pages, $23.00

Christina Hoff Sommers: A feminist who does not like what feminism has become

JOYCE RAVID

TEN YEARS LATE, BUT WE'RE NEARLY there. War is Peace. Freedom is Slavery. "Objective reality" is an invidious myth employed by evil oppressors (men) to maintain their phallohegemonic dominance. Big Sister Is Watching for instances of heteropatriarchal discourse, and punishment is swift and severe. A futuristic nightmare? No, the all-too-real world of your high school, university, newsroom, and administrative agency—and coming soon to a workplace near you.

In *Who Stole Feminism?: How Women Have Betrayed Women*, Christina Hoff Sommers, associate professor of philosophy at Clark University, describes the appropriation of the movement once known as feminism by a cadre of party-line bureaucrats promoting an agenda of victimism and victimology-based revolution, with serious implications for the wider world.

Sommers draws a clear distinction between "equity feminism," the classical-liberal position characterized by the unobjectionable slogan, "Equal pay for equal work," and "gender feminism," the aggressive self-pitying whine of an army of professional victims that has come to dominate discussions of women's issues. Ideological correctness, the suppression of dissent, and salvation through thought control and governmental fiat are the new orders of the day.

Sommers traces classical-liberal equity feminism to the Seneca Falls convention of 1848. The organizers of Seneca Falls recognized their privileged position as educated members of a middle-class elite, and they placed their prestige and experience in the abolitionist movement at the service of the genuinely disadvantaged. It may be hard to remember today that throughout most of history women were essentially the property of their fathers and husbands, and in many places in the world today, still are. Too many of the world's women remain oppressed—except in the places where feminists are doing the most complaining.

American women outlive their male counterparts by nearly 10 years, control more than half the national wealth, and make up the majority of undergraduate students, law students, and voters. Skeptics are starting to question whether this is a group genuinely entitled to victim status. Never has such a privileged circle been represented by such an array of pedants claiming that a war is being waged against them, or has so cowed the media and the government into abandoning all standards of objectivity. It is an irony almost too delicious to contemplate: How did one of the most privileged sets of people in the history of the world, in terms of wealth, education, and political power, come to be represented by its self-appointed spokespersons and their media minions as a passel of cringing victims in need of special protection by an all-wise government?

SOMMERS ANALYZES THE PHILOSOPHICAL underpinnings of the victimology-feminist movement, first visiting the universities, where lockstep conformity is enforced in the name of "diversity" and "inclusiveness." She discusses the ideological litmus tests that determine career advancement, chronicles the "redefinition of knowledge" that aims to eliminate such male biases as the illusion of excellence, and describes the way in which education has been placed in the service of politics and politically biased group therapy. She shows how, with the backing of government agencies, history texts are being rewritten to accommodate feminist sensitivities, and science and mathematics redefined, with "logic and rationality [derided as] 'phallocentric.'" This is not a small revolution. The curriculum transformation movement, she points out, "has quietly become a potent force affecting the American classroom at every level, from the primary grades to graduate school."

This is the kind of book that entertains while it horrifies. Sommers is at her most devastating when she attacks the pseudo-statistics victimology feminists employ to buttress their claims. She exposes a number of influential hoaxes, meticulously tracking the way they have been mindlessly repeated by the media until they have come to seem part of received wisdom. These include the Super Bowl canard holding that wife beating increases 40 percent during the game (utterly baseless, but TV stations ran ads urging men to remain calm); the fantastic statistic that 150,000 American women die each year from anorexia (more than three times the annual number of automobile fatalities for the entire population?); and a supposed March of Dimes study proving that wife abuse is responsible for more birth defects than all other causes combined (there was no such study). She also discusses the inflated statistics and flawed or imaginary data employed by rape-crisis advocates,

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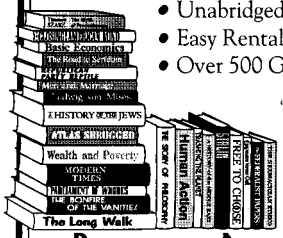

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self-esteem promoters, and gender-equity bureaucrats to advance their self-perpetuating agenda. No reader of this book will ever again consume a scare statistic on any subject without a large dose of salt.

The solution to all the phallogeneric terror, of course, is increased governmental regulation; and it is worth noting, as Sommers does, that the studies on which the new spate of regulations is based are done by the same advocacy groups and individuals whose fanciful statistics feed the alarmist news stories. Is this the result of a conscious conspiracy? Probably not. Gender feminism, as Sommers points out, is now an industry, with generous research funding, grant money, and careers available to those who propose to root out ever more arcane instances of oppression. There is only one pool of approved "experts" in the field, since any questioning of the approved orthodoxy is labeled sexism, "backlash," or delusion. It isn't strange that the "experts" should seek to protect their turf.

Sommers's meticulous research and judicious tone should protect her from accusations of sensationalism. But they do not. As a consequence of her sanity, Sommers has been subject to the worst sort of *ad feminam* attacks, both in the media (most notoriously, in the relentlessly politically correct *New York Times*, whose Book Review editors assigned her book to one of the doctrinairians whose antics she exposes) and at what pass for academic feminist conferences. But Sommers is not alone in her critique of gynocentric feminism. She quotes such skeptics as Iris Murdoch, Doris Lessing, Cynthia Ozick, and Camille Paglia, and accurately points out that most people are on the side of common sense.

IN LATE 1993, *Ms.* MAGAZINE DEVOTED nearly an entire issue to a hand-wringing debate over why so many women refuse to identify themselves as "feminists" despite the fact that paleofeminist issues such as equal pay and respect both at home and in the workplace are part of the fabric of their daily lives. The answers delivered by the panel of pundits ranged from the "backlash" bugaboo to lesbiphobia to the alleged takeover of the media by the Christian Far Right.

The real answer, however, is that most people shun the ideology of oppression, viewing it as a philosophy for losers. A frequently heard criticism of party-line feminism from its inception was that it failed to address mainstream women's needs, patronizing those who made child-rearing a career and ignoring, if not denigrating, those who chose traditionally female professions such as nursing, school teaching, and secretarial work. As for those who went so far as to trade on their femininity, such as cocktail waitresses, exotic dancers, and prostitutes: Off to the reeducation camp! But unfortunately we can't all be aircraft mechanics.

Sommers is at her most devastating when she attacks the pseudo-statistics victimology feminists employ to buttress their claims. She exposes a number of influential hoaxes, meticulously tracking the way they have been mindlessly repeated by the media until they have come to seem part of received wisdom.

Sommers's subtitle embodies a neat argument. Misandry invariably leads to misogyny, since women who fail to adhere to the party line must be collaborationists. In the fashionable Foucaultian model, they have internalized the oppressor. So women who belong to Weight Watchers or the Catholic church or the Republican Party or any other identified institution of male oppression do not know their own minds: They have been

colonized by the patriarchy and must be helped, by their self-identified liberators, to exorcise the demons within.

For all their progressivist cant, gynocentric feminists are profoundly "regressive" (Cynthia Ozick's word). Like some 19th-century romantics, they embrace a vision of womanhood as the embodiment of finer sensibilities, closer to the state of angels than to men. Sexuality itself is a male-constructed force utilized to terrorize women, as is being carefully taught today to children as young as kindergartners by professional "gender monitors." Sommers's examples of feminist testimonies of personal outrage in the face of male "discourse" (catcalls, jokes, and even classical and abstract art) tend inevitably—and hilariously—toward a description of the attack of paralysis once known as "the vapors." Demands for special protections for women in excess of those afforded the coarse creatures known as men follow logically—if logic is still an acceptable invocation. Completing the circle, the gender feminist redefinition of knowledge to eliminate phallohegemonic verticalism and embrace "female ways of knowing" confirms the male chauvinist suspicion that women think with their chests, not their heads.

IF GENDER FEMINISTS ARE REACTIONARIES, where does that place equity feminists such as pioneers Elizabeth Cady Stanton ("We ask no better laws than those you have made for yourselves"), Mary Wollstonecraft ("I wish to persuade women to endeavor to acquire strength, both of mind and body"), Maria Edgeworth ("Power is the law of man; make it yours"), and Sommers herself ("I have been moved to write this book because I am a feminist who does not like what feminism has become")? Is the debate between conservatives ("First Wave" feminists, in Sommers's phrase) and exponents of the Dark Ages, with their authoritarianism, separatism, and witch hunts? Oddly, both sides claim, with some justification, the rubric "New": equity feminists seeking to reclaim the movement from the radical fringe, as in a recent *Boston Globe* story

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("New Breed of Feminist Challenges Old Guard," May 29, 1994); and radicals, who see the Enlightenment principles that informed the original struggle as just more old-hat patriarchalism, the dangerous doctrine of individuality.

Perhaps the confusion of language reflects confusion of object. Democratic liberalism—real tolerance for differing views—can survive only in an atmosphere of civility and responsibility. The feel-good notion that all opinions are equally valid, the liberal bias against "making judgments," invites totalitarian takeover. It is not clear that this direction can be reversed, as Sommers wishes. One is hard-pressed to think of many historical examples of successful, liberal-based revolutionary movements that, once taken over by radicals, have been recaptured by the tolerant. The latter generally lack the rage, the "fighting madness" (as Eleanor Smeal, the former president of NOW, puts it), that infuses ideological warriors. Liberal feminism was taken over by radicals because of its failure to condemn illiberals, the moderates not realizing that, as in most revolutions, they would be the first to be shot. It isn't news that all revolutions devour their own.

So the answer to the question in the book's title is, nobody stole feminism. The liberals gave it away. Their abdication of principles and cowardly fear of reprisals so ably chronicled by Sommers sealed the deal. What one wonders is, Why does she want it back?

While her arguments are engaging and her focus admirable, the implications of the Kafkaesque reality she delineates are even larger than she acknowledges. It is more important to save civilization as a whole from the predations of enforced political correctness than to save only feminism. The threat to freedom is larger than the threat to a movement that affects all of the people only some of the time. The goals of Seneca Falls have largely been accomplished, at least here, and additional progress is being made daily. The low level of acceptance of victimology feminism means that like other pointless intellectual fads, it too will pass.

But the effects of this brand of poison are long lasting. "For some time to come," writes Sommers, "the gender monitors will still be there—in the schools, in the feminist centers, in the workplace—but, increasingly, their intrusions will not be welcome." Unwelcome, perhaps, but the laws and their bureaucratic enforcers, the redefinition of knowledge in favor of political interests, and the precedents they set will remain. And everybody, from taxi dancers to aircraft mechanics, will have to pay for it.

Tama Starr is president of the Artkraft Strauss Sign Corp. in New York City and the author of Eve's Revenge, *a satire of feminist excesses to be published in October by Harcourt Brace.*

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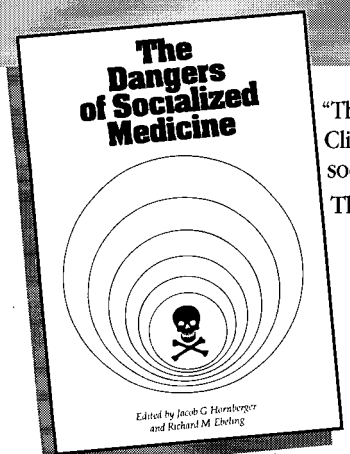

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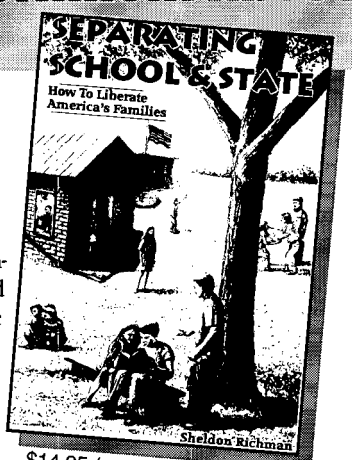

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HENRY PAYNE

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They have been abetted by Congress, which passes welfare laws prompting, indeed compelling, wide-ranging litigation. Courts have responded in fascinating and sometimes surprising ways. And although courts have thus far refused to recognize a constitutional right to welfare, they have played a central and evolving role in shaping the welfare system of today.

WEAVING COHERENT THEMES OUT OF THE many statutes and case law permutations requires a deft hand. Drawing from those themes real insights into the role of courts in policy making is an even more daunting task. R. Shep Melnick, chair of the politics department at Brandeis University, takes on this challenge in his new book, *Between the Lines: Interpreting Welfare Rights.*

Melnick offers the best analysis to date of how courts have addressed the issues surrounding welfare over the past 50 years, and he provides a penetrating appreciation of the courts' policy-making function. In keeping with the book's rigorous academic style, Melnick uses case studies to examine how courts interpreted sweeping, ambiguous, and at times contradictory statutes passed by Congress. Three programs, Aid to Families with Dependent Children (AFDC), education for the handicapped, and food stamps, offer fascinating insights on how over time, regardless of whether the Supreme Court was dominated by liberals or conservatives, court action expanded program benefits and increased federal control over state and local government.

The accretion of federal power occurred through both constitutional and statutory interpretations. For instance, in 1967, the Supreme Court in *Goldberg v. Kelly* ruled that welfare recipients facing "brutal need" are entitled to a due process hearing before benefits can be terminated. The ensuing years saw welfare procedures grow enormously complicated and difficult to modify. (One of the many reasons President Clinton's welfare-reform proposal will never achieve its purported goal of ending welfare as we know it is the myriad rights of appeal provided recipients under existing law and increased in the Clinton plan.)

Meanwhile, as the influence of the Rehnquist Court began to be felt, the Supreme Court displayed less willingness to second-guess Congress or administrative agencies. This restraint culminated in 1984 in *Chevron v. NRDC,* where the Court held that "when the statute is silent or ambiguous with respect to the specific issues," the sole issue for the court is whether the administrative agency adopted a "permissible construction of the statute." That decision gave a green light to federal agencies that in classic public-choice fashion maximize their budgets and programs as much as possible.

Even as the Supreme Court retreated from the activism of the 1960s, the lower courts decided dozens of cases that continued to expand welfare programs and procedures. Typically, those cases turned on statutory or regulatory interpretations of a very technical nature (such as what constitutes a "standard filing unit" for Medicaid eligibility; whether disability payments should be counted as "earned" or "unearned" income). The cumulative effect of those decisions, especially when pushed by the Legal Services Corporation, was to create an enormous, legally complex welfare system prone to litigation over every procedural or policy dispute.

THE CASE STUDIES DEMONSTRATE HOW statutorily created rights inevitably mean different things to Congress, interest groups, and scholars, and how in the end the courts are always called upon to resolve ambiguities. Each case study provides lessons that illuminate the results of court interpretations. For instance, Melnick draws five lessons from the AFDC litigation.

His first lesson is that litigation that is part of a national policy agenda is more likely to bring the extreme case before the court, with a resulting increased likelihood of novel rulings. The paradigm example was *King v. Smith,* in which the Supreme Court, propelled by Legal Services Corporation's vivid portrayal of racial

animus in George Wallace's welfare program, blithely ignored jurisdictional constraints and struck down the program. Jurisdiction was presumed in welfare disputes increasingly from then on as courts federalized welfare programs.

Second, "litigation tends to isolate what in the real world is merged." For example, welfare eligibility and benefits have received starkly different treatment from the courts, with the result that as more people became eligible, benefits became harder to obtain. Third, when the Supreme Court relies on legislative silence to assume congressional intent, it risks paralyzing the system through the uncertainty created when lower courts attempt to apply Supreme Court rulings in particular cases. In the aftermath of *King v. Smith*, lower courts groped inconclusively for consistent principles to apply to the rising load of welfare issues placed before the court. Such uncertainty continues to this day.

In 1967, the Supreme Court in *Goldberg v. Kelly* ruled that welfare recipients facing "brutal need" are entitled to a due process hearing before benefits can be terminated. The ensuing years saw welfare procedures grow enormously complicated and difficult to modify.

Fourth, Supreme Court rulings have gone through three phases (the Warren, Burger, and Rehnquist Courts) with conflicting rulings, many still unresolved, as a result. And finally, AFDC cases have gone from grand principles to wooden rules focusing on administrative minutiae. As this has happened, the moral authority of welfare advocates has waned.

Sometimes courts are prompted by skillful advocates with a national litigation agenda. Melnick, like others before him, traces the successful courtroom strategy used by the Legal Services Corporation to expand the procedural and substantive rights of welfare recipients. But Melnick goes further and explores what he calls the "central irony" of AFDC litigation: "Reformers seeking to make AFDC more nationally uniform, more generous, and more widely available turned to the courts because their efforts had repeatedly been met with failure in Congress; the courts then justified their policies in claiming that this is just what Congress intended all along." Congress was often duplicitous in this charade by passing vague and sweeping laws that were deliberately left to the courts to interpret by "reading between the lines."

MELNICK EXAMINES THE CONGRESSIONAL reforms that eventually culminated in the Family Support Act of 1988. He finds that Congress overturned a "surprisingly large" number of court decisions limiting technical rules such as calculating step-parents' income in determining eligibility, limiting benefits to newcomers, and limiting benefits to college students. Nevertheless, the basic legal edifice of the welfare state remained and federal control continued over many aspects of state programs, thereby constraining innovation and increasing bureaucratic costs.

Throughout this legal history, courts and the Congress grappled with various theories of rights. Melnick skillfully explores the implications of those theories, from the "common law of need" created by the courts in the 1960s as welfare was expanded, to the "right to a free and appropriate education."

While not grounded in a natural-rights philosophy, Melnick brings scholarly skepticism to the ambiguous and loose ways in which "rights" have been created and enforced by law. This is not a book intended to propose policy reforms, but Melnick's skillful analysis indicts our legal system for its lack of a consistent natural rights-based approach to decisions. He

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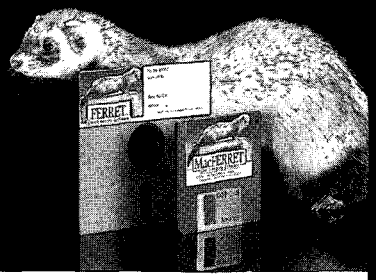

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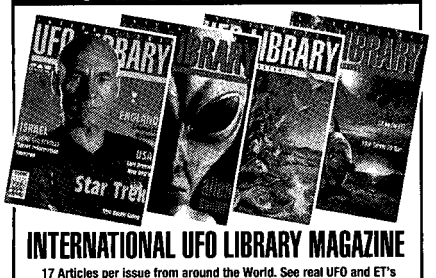

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accomplishes his goal of studying the programmatic consequences of court decisions to force the reader to link legal abstractions with real-world problems.

The reader will not come away from this book with a comfortable assurance that welfare as we know it will end anytime soon. For better or for worse, the courts will continue to play a defining role in the growth (or demise) of the welfare state. Litigation like that currently pending in New Jersey will determine the course of welfare reform at the state and national level. The political dynamics, institutional inertia, and unmoored decision making inherent in welfare law, mean that advocates for a diminished welfare state must be relentless in their efforts nowhere more than in court.

William H. Mellor III is president and general counsel of the Institute for Justice, which is opposing NOW in the New Jersey litigation.

An FDA Fable

By Robert Higgs

The FDA Follies, by Herbert Burkholz, New York: Basic Books, 228 pages, $23.00

WHY WAS THE U.S. FOOD AND Drug Administration so fouled up during the 1980s? Herbert Burkholz in his book falls back on the familiar left-liberal litany: It was Reagan's fault. In doing so, he ignores the long-standing problems inherent in bureaucratic attempts to achieve "safety" at any cost.

Burkholz views the FDA fiascoes of the 1980s as anomalous because he has a starry-eyed view of the agency in earlier days. He says nothing about the tens of thousands who died prematurely in the '50s, '60s, and '70s because the FDA would not permit sellers to tell consumers about the health benefits of lowering dietary fat; nor does he mention that the agency dallied for nearly a decade before approving new beta blocker drugs being used to treat heart disease with great success in other countries. In Burkholz's eyes, before the Reagan administration arrived to ruin everything with its "cold-blooded business-as-usual attitude," the agency epitomized "the best that there was in public service: high, but attainable, scientific goals...sought by dedicated professionals." It enjoyed "worldwide respect" and was "a proud place" animated by a "laudatory purpose." In those days, heroic bureaucrats busied themselves holding in check "avaricious" capitalists who strained to peddle poisonous products to an unwitting public.

Then, with the arrival of the Reaganauts, who held the budget in check and insisted that the FDA go easy on business, the agency hit the skids. In a succession of incidents ranging from the farcical Chilean grape scare to the exposed bribery of FDA examiners, the bureaucrats dropped the ball or ran the wrong way with it. But can the "Reagan did it" explanation really account for this sorry succession of screw-ups? Evidently even Burkholz has doubts, as he opines that "the workings of the FDA during the 1980s seem to defy understanding."

For those aware of public-choice theory, the events of the 1980s present no mystery. The FDA's follies are precisely the sort of actions that one expects a powerful government bureaucracy to take—self-serving, irresponsible, heedless of the injuries it causes so long as they are ignored by the news media, and vindictive against whistle-blowers. Burkholz's ideology prevents him from presenting a coherent interpretation, but the facts he relates tell a sufficiently woeful tale in spite of the author's obtuseness.

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Consider the generic drug scandal that climaxed in 1989. Under legislation enacted in 1984 to expedite the availability of generic drugs, producers are required only to establish bioequivalency between their product and the brand-name product; they need not repeat all the tests originally required. Some applications to market generic drugs did receive quick approval, but others languished in the bowels of the FDA. Stymied in their attempts to break through the official barrier, executives of three companies—Mylar, Barre-National, and Barr Laboratories—undertook investigations and then testified before Congress about the corruption they had discovered. Several FDA reviewers were accepting bribes to hasten the approval of certain companies' applications and derail those submitted by competing companies. Eventually 42 persons and 10 companies were found guilty of criminal acts.

How did the FDA respond? Of course the agency made the usual gestures to demonstrate that it had thoroughly cleansed itself—most regrettably, Dr. David Kessler was appointed to lead the agency out of the bog—but beyond the range of the TV lights the bureaucrats set about getting revenge against those who had exposed the FDA's malfeasance. Barr Laboratories, in particular, bore the brunt of the agency's wrath. As Burkholz says, "For the next three years the FDA never stopped trying to put the company out of business" by repeatedly inspecting its facilities and delaying approvals of its products.

Naturally the agency got away with this vengeful conduct; it virtually always does. Few people outside the industries subject to its regulation appreciate the extent to which the FDA acts as lawmaker, police officer, judge, jury, and executioner. Companies that want to remain in business have no effective recourse. Even if one were to win a case in court, one would certainly be crushed by the regulators somewhere down the line. As Mylar's CEO Roy McKnight testified before Congress, "It was well known throughout the industry that so-called complainers could expect to receive the harshest of treatment, including direct retaliation." Indeed, even companies that do not make waves may be attacked, because from time to time the FDA bludgeons a business merely to set an example and terrify others.

WITH REGARD TO THE FDA'S REGULATION of medical devices, Burkholz considers three important episodes, each with significant consequences. The first involves the Dalkon Shield manufactured in the early '70s by the A.H. Robins

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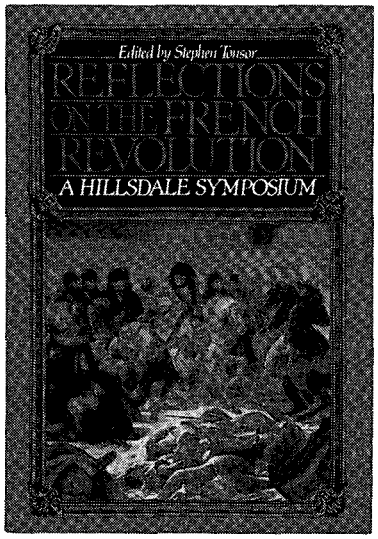

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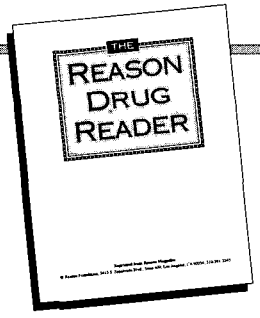
Company and used by some 3.6 million women worldwide. It turned out that the device raised the risk of pelvic inflammatory disease and spontaneous septic abortion. When Robins stopped selling the product in 1975, users had reported 260 septic abortions, 15 of them fatal. Bad publicity about the device led Congress to pass the Medical Device Amendments in 1976, granting the FDA authority to require that manufacturers get permission from the FDA before marketing any new or substantially altered medical device.

The second episode had to do with the Bjork-Shiley heart valve approved by the FDA in 1979, manufactured by Pfizer, and eventually implanted in 55,000 patients. The valves failed, usually with fatal results, in seven of every 10,000 users per year. Bad publicity and mounting lawsuits led Pfizer to stop selling the product in 1986. The company later consented to set aside $375 million for research on detecting cracks in implanted valves, surgery to replace defective ones, and compensation of sufferers. With the Bjork-Shiley valve foremost in their minds, lawmakers passed the Safe Medical Devices Act of 1990, greatly enlarging the FDA's authority to regulate manufacturers of medical devices.

Burkholz treats the Dalkon Shield and the Bjork-Shiley heart valve as unmitigated disasters. He scoffs at the manufacturers' defense of their products in public statements and before the courts. This reveals his general approach, which resembles that of the FDA and most of the news media. He presumes that a risky product ought to be banned without considering the risks of such a ban.

For example, suppose the Dalkon Shield caused many more deaths than reported, say, 36 per year. That amounts to one death per 100,000 users, which is a small risk in comparison with the risk entailed by pregnancy and childbearing. In the United States between 1970 and 1975, when the Dalkon Shield was being sold, the maternal death rate averaged 17 per 100,000 live births, so one could argue that each 100,000 Dalkon Shield IUDs used, by preventing pregnancies and subsequent births, saved 16 lives a year on balance. The Bjork-Shiley heart valve is an even more extreme case. As Pfizer's chief executive observed in a statement unfairly mocked by Burkholz, "These people [bringing lawsuits] were going to die anyway, and they are alive today because of the valve."

The third episode Burkholz discusses involves silicone-breast implants. These created an enormous furor that prompted the FDA to reduce drastically the number of medical devices approved during the past three years. The implant manufacturers have ponied up $4.3 *billion* for potential claimants. Sheriff Science then rode in, unfortunately after the legal rustlers had made off with the horses. According to a Mayo Clinic study of 749 implant re-



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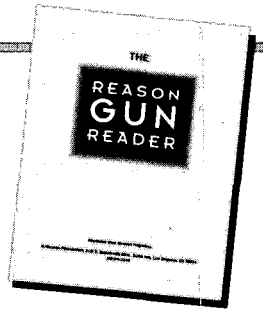

Rational debate is something most gun-control supporters don't want—they'd rather score points with sensational anecdotes and name calling. And drug-prohibition supporters aren't any better, relying on weak data and even weaker arguments to support their oppressive agenda.

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cipients and 1,498 controls between 1964 and 1991, there is no evidence that the implants cause connective-tissue diseases and other disorders that many women, loudly supported by the news media, have attributed to them. Recent studies by researchers at Yale University, the University of Michigan, and the University of Maryland—as well as a similar study in Australia—found no connection between implants and scleroderma. Indeed, no study has provided a firm scientific foundation for the numerous claims of injury. But the FDA, which pulled the silicone implants off the market in 1992 except for reconstructive surgery, indicates that it will not remove the ban until the evidence that implants are safe becomes overwhelming.

Hardly ever is the FDA held responsible for the deaths of those who perish awaiting its approval of new drugs and devices—not to speak of the products that never get produced because of the costs and uncertainties the FDA places in the way of the potential innovators.

As usual the wishes of potential users and their physicians receive no weight whatever as the agency makes sure that it will not be exposed by the news media for having approved an "unsafe" device. For the media and the FDA the world is black and white. A product is either safe or unsafe. Bureaucrats reject the notion of balancing risks against expected benefits, particularly if individual users and their physicians do the balancing. Hardly ever is the FDA held responsible for the deaths of those who perish awaiting its belated approval of new drugs and devices—not to speak of all the beneficial products that never even get produced because of the costs and uncertainties the FDA places in the way of the potential innovators.

Burkholz devotes two chapters to the FDA's misguided regulation of AIDS drugs and one chapter to its flawed oversight of HIV-tainted blood supplies. He concludes that AIDS ultimately brought about "a historic move by the FDA toward a more sensitive and flexible approach to drug approval." Wrong again. Under pressure from courageous and politically savvy AIDS activists and their media friends, the FDA made exceptions for AIDS drugs alone. Victims of other maladies still must wait, their remedies unexpedited, for want of comparable political clout.

With the appointment of Kessler, a "dedicated activist," as commissioner of the FDA in December 1990, "the retreat from folly had begun"—or so Burkholz would have us believe. (In his acknowledgments, he informs us that Kessler "was at all times open and forthcoming" with him.) In reality, the new commissioner quickly turned the agency into a fearsome police force. In his first two months he "added a hundred new criminal investigators to the enforcement staff, many of them formerly with the Secret Service and the Drug Enforcement Agency." Then followed a series of armed raids on alternative health clinics, vitamin factories, and dealers in dietary supplements as well as greatly increased numbers of warning letters, product seizures, forced factory shutdowns, and criminal prosecutions in the drug and device industries.

Kessler has proven himself a Machiavellian manipulator of the media and a clever cultivator of congressional patrons. Under his direction an agency already responsible for countless thousands of premature deaths and unimaginable amounts of needless suffering has come increasingly to resemble the Gestapo. With our fate in such hands, the FDA follies of the 1980s may come to be regarded as the good old days. ®

Robert Higgs is the author of Crisis and Leviathan *(Oxford University Press).*

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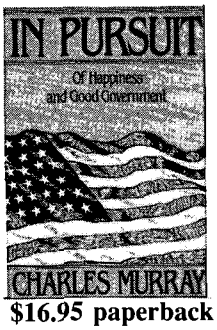

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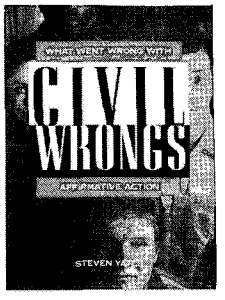

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Boob-Tube Babble-On

By Thomas W. Hazlett

Why more TV is better TV

HERE IS A PREJUDICE HELD BY ALL the wise in America: The so-called information revolution is just more of the same old same old.

It's a tune sung by Bruce Springsteen ("Fifty-seven channels and nothing's on...") and a refrain penned by such noteworthy television critics as *The Washington Post*'s Tom Shales. What all the inquiring minds want to know is, Just how sick are Americans that they will watch such... junk?

The truth is that our viewing choices have never been better. Take the current war cry of the conventional wisdom bellyachers: the press's fascination with the O. J. Simpson affair. Why not consider this a public spectacle worthy of prime time? A great athlete, blessed with all the successes and comforts modern society can bestow, accused of hacking his beloved to death—this is practically Shakespearean in its thematic appeal.

In fact, the coverage of legal affairs and sensational trials on cable's Court TV is superb. If one elects to tune into Lorena's or the Menendezes' or William Kennedy Smith's, the crime drama is in real time and the analysis of the legalities sublime.

Such networks are available because of one simple economic reason and one simple political reason. The economics of cable networks are distinctly different from those of broadcast networks because there are so many more of the former. The sheer abundance of coaxial cable airspace—a standard 450MHz system can easily pour 64 channels into your television set—makes each channel cheaper. Cable networks can now profitably narrowcast to hit small audiences with specialized shows. Least-common-denominator television has been replaced by niche programming.

That simple fact makes elitist critiques of cable television totally absurd. I may consider 99 percent of the video fare trash. But in a 500-channel environment, that still gives me five worthwhile selections for each time slot—four more than I can watch. TV's old world, dominated by the network three, would bankrupt a producer with an audience share of less than 20. Today, CNN thrives if it gets a 2. Consumer choice is skyrocketing, even as the amount of truly terrible stuff (read: someone else's favorite) explodes too.

In reality, the emergence of the 500-channel cable system will be the solution to bad TV. I certainly could use another dozen C-SPANs or sports channels to choose from. If that means that I have another 25 country music channels on the dial—hey, that's what programmable remotes are for.

NOW TO THE POLITICS. WHEN THE ELITists claim that PBS is the only television worth watching, they lie: That's not what they watch, unless they are 3 percent of the U.S. population (Nielsen ratings don't lie). They like Discovery and ESPN and HBO just as much as I do, which is why cable ratings are now 10 times that of PBS.

You may note that the cable nets achieved such success without one dollar of federal subsidy. Indeed, cable programmers were *targeted* by federal regulators who kept them *out* of U.S. households through the 1960s and 1970s. Only deregulation under Ford and Carter allowed America to be wired for cable. Today, wireline video networks are under no "public interest" obligations—no Fairness Doctrine, no equal-time rule, no right of reply to personal attack. While each of America's (and virtually every other country's) broadcasting stations is under a state-imposed obligation to air balanced coverage of abundant public affairs, when you want unfettered free speech you turn to the unregulated C-SPAN; the hot debate is on the unlicensed CNN's *Crossfire*; it is ironic in extremis that the wonderful *Equal Time* on CNBC is seen on a cable network without any "equal time" provision.

The ruckus and intellectual handwringing about the televised decline of Western Society properly belongs on an afternoon segment of *Geraldo*. I take my cable-viewing dial as a magazine rack. The fact that I will only read a handful of the many publications (some of them quite sick and perverted—but let's leave *The New York Review of Books* out of this discussion) is wholly irrelevant to my choices as a consumer. Yet it is overwhelmingly important to the rights of Americans to enjoy the fruits of democracy, and to consume any informational calories their sweet hearts desire.

Incredibly, cable was suppressed on the premise that "diversity of expression" was a First Amendment value. The political spin was that only regulated broadcasters—protected from the violence of robust market rivalry—could deliver such benefits to the public. Today apologists for regulation actually flip a 180, arguing that diversity on cable is wretched and that Americans need the shared community spirit once so happily delivered by a network triopoly.

There is a bogus sophistication exhibited by the literati who mouth cliches of diversity and free speech while flogging them in fact. It indicates that 5-year-old viewers of *Beavis and Butt-head* aren't alone in having difficulty pinpointing the divide between reality and fantasy on the TV monitor in the Information Age. ®

Contributing Editor Thomas W. Hazlett teaches economics and public policy at the University of California, Davis.

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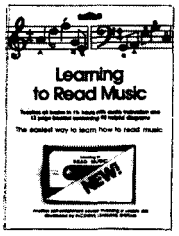

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This innovative program will give you all the basics of reading music in a format designed to make it easy to learn on your own.

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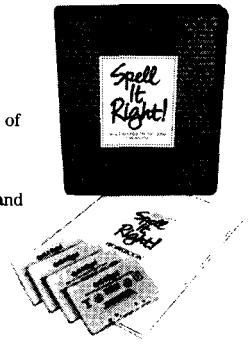

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- Previewing—the key to efficient studying
- How to review

Includes 3 cassettes in album.
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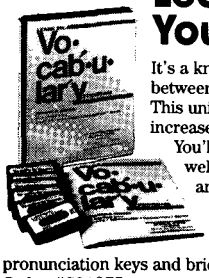

It's a known fact that there is a high, positive correlation between having a good vocabulary and career achievement. This unique program will give you the power words you need to increase the effect of your spoken and written communications. You'll add over 500 important words to your vocabulary, as well as special techniques that will help you to remember and use the new words correctly.

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Learn to speak a foreign language fluently on your own and at your own pace with what are considered the finest in-depth courses available. Many were developed by the Foreign Service Institute of the U.S. Department of State for diplomatic personnel who must learn a language quickly and thoroughly. Emphasis is on learning to speak and to understand the spoken language. A typical course (equivalent to a college semester) includes an album of 10 to 12 audio cassettes (10 to 18 hours), recorded by native-born speakers, plus a 250-page textbook.

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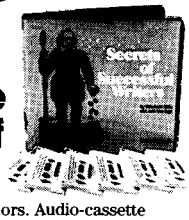
Learn the Secrets of Successful Writers



Learn the techniques and secrets of success of famous authors. Audio-cassette program by long-time teacher and nationally published writer Elizabeth R. Bills provides tips on how to get started as a writer, begin a story, write a magazine article, and more! Plus—a bonus techniques cassette by famed science-fiction writer A.E. Van Vogt. Six audio cassettes in all. Order #S23350, $49.50.

Learn to Improve Your Speech

Accept compliments on your beautiful speaking voice after learning from this course, designed to correct the most common causes of unpleasant American speech. Professional speech tutor Phyllis Rooder-Weiss shows you how to diagnose your speech to pinpoint those elements that need improvement.

At a fraction of the cost of private lessons, you will learn how to:

- Correct nasality and build resonance
- Protect your voice properly to be heard
- Achieve clear and distinct delivery of words
- Eliminate local accents and pronounce words correctly
- Overcome mannerisms distracting to oral expression
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The program includes 3 cassettes and accompanying manual. Order #S23720, $39.50.

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